99TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
99-962

SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

OCTOBER 3, 1986.—Ordered to be printed

Mr. ECKART, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2005]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Superfund Amendments and Reauthorization Act of 1986".

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SEC. 2. CERCLA AND ADMINISTRATOR.

As used in this Act—

(1) CERCLA.—The term "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(2) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

SEC. 3. LIMITATION ON CONTRACT AND BORROWING AUTHORITY.

Any authority provided by this Act, including any amendment made by this Act, to enter into contracts to obligate the United States or to incur indebtedness for the repayment of which the United States is liable shall be effective only to such extent or in such amounts as are provided in appropriation Acts.

SEC. 4. EFFECTIVE DATE.

Except as otherwise specified in section 121(b) of this Act or in any other provision of titles I, II, III, and IV of this Act, the amendments made by titles I through IV of this Act shall take effect on the enactment of this Act.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

SEC. 101. AMENDMENTS TO DEFINITIONS.

(a) INDIAN TRIBE.—Paragraph (16) of section 101 of CERCLA (defining "natural resources") is amended by striking "or" the last time it appears and inserting before the punctuation at the end thereof the following: ", any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe".

(b) STATE OR LOCAL GOVERNMENT LIMITATION.—Paragraph (20) of section 101 of CERCLA (defining "owner or operator") is amended as follows:

(1) Add the following new subparagraph at the end thereof:

"(D) The term 'owner or operator' does not include a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign. The exclusion provided under this paragraph shall not apply to any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a State or local government shall be subject to the provisions of this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107.".

(2) Amend clause (iii) of subparagraph (A) to read as follows: "(iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand.".

(3) Capitalize the first word of subparagraphs (B) and (C) and substitute a period for the semicolon at the end of subparagraphs (A), (B), and (C).

(c) RELEASE.—Paragraph (22) of section 101 of CERCLA (defining "release") is amended by inserting after "environment" the following: "(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)".

(d) REMEDIAL ACTION.—Paragraph (24) of section 101 of CERCLA (defining "remedy" and "remedial action") is amended as follows:

(1) Strike "welfare. The term does not include offsite transport" and all that follows down through the semicolon at the end of such paragraph and insert "welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.".

(2) Strike "or" before "contaminated materials" and insert"and associated".

(e) RESPONSE.—Section 101(25) of CERCLA (defining "respond" and "response") is amended by inserting at the end thereof the following: ", all such terms (including the terms 'removal' and 'remedial action') include enforcement activities related thereto.".

(f) ADDITIONAL DEFINITIONS.—Section 101 of CERCLA is amended by striking out "; and" at the end of paragraph (31) and substituting a period, by changing the semicolons at the end of paragraphs (1) through (29) to periods, by inserting "The term" at the beginning of paragraphs (1) through (22) and paragraphs (28) and (31), by inserting "The terms" at the beginning of paragraphs (23) through (27) and paragraphs (29),(30), and (32) by striking out ", the term" in the material preceding paragraph (1), and by adding the following new paragraphs at the end thereof:

"(33) The term 'pollutant or contaminant' shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term 'pollutant or contaminant' shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) and shall not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

"(34) The term 'alternative water supplies' includes, but is not limited to, drinking water and household water supplies.

"(35)(A) The term 'contractual relationship', for the purpose of section 107(b)(3), includes, but is not limited to, land contracts, deeds or other instruments transferring title or possession, unless the real property on which the facility concerned is

located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

"(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

"(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

"(iii) The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of section 107(b)(3) (a) and (b).

"(B) To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

"(C) Nothing in this paragraph or in section 107(b)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 107(a)(1) and no defense under section 107(b)(3) shall be available to such defendant.

"(D) Nothing in this paragraph shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

"(36) The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for

the special programs and services provided by the United States to Indians because of their status as Indians.".

SEC. 102. REPORTABLE QUANTITIES.

Section 102(a) of CERCLA is amended by adding at the end thereof the following new sentences: "For all hazardous substances for which proposed regulations establishing reportable quantities were published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall promulgate under this subsection final regulations establishing reportable quantities not later than December 31, 1986. For all hazardous substances for which proposed regulations establishing reportable quantities were not published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall publish under this subsection proposed regulations establishing reportable quantities not later than December 31, 1986, and promulgate final regulations under this subsection establishing reportable quantities not later than April 30, 1988.".

SEC. 103. NOTICES; PENALTIES.

Section 103(b) of CERCLA is amended by striking out "paragraph" in the last sentence and inserting in lieu thereof "subsection" and by adjusting the left hand margin of the text of such subsection following "federally permitted release," the third place it appears so that there is no indentation of such text.

SEC. 104. RESPONSE AUTHORITIES.

(a) RESPONSE BY POTENTIALLY RESPONSIBLE PARTIES; PUBLIC HEALTH THREATS.—Section 104(a)(1) of CERCLA is amended by striking ", unless the President determines" and all that follows down through "party." and inserting a period and the following: "When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 122. No remedial investigation or feasibility study (RI/FS) shall be authorized except on a determination by the President that the party is qualified to conduct the RI/FS and only if the President contracts with or arranges for a qualified person to assist the President in overseeing and reviewing the conduct of such RI/FS and if the responsible party agrees to reimburse the Fund for any cost incurred by the President under, or in connection with, the oversight contract or arrangement. In no event shall a potentially responsible party be subject to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any such arrangements as a response action contractor, or as a person hired or retained by such a response action contractor, with respect to the release or facility in question. The President shall give primary attention to those releases which the President deems may present a public health threat."

(b) REMOVAL ACTION.—Section 104(a)(2) of CERCLA is amended to read as follows:

"(2) REMOVAL ACTION.—Any removal action undertaken by the President under this subsection (or by any other person referred to in

section 122) should, to the extent the President deems practicable, contribute to the efficient performance of any long term remedial action with respect to the release or threatened release concerned."

(c) LIMITATIONS ON RESPONSE.—Section 104(a) of CERCLA is further amended by adding after paragraph (2) the following new paragraphs:

"(3) LIMITATIONS ON RESPONSE.—The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—

"(A) of a naturally occurring substance in its unaltered form or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

"(B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

"(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

"(4) EXCEPTION TO LIMITATIONS.—Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section, the President may respond to any release or threat of release if in the President's discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.".

(d) COORDINATION OF INVESTIGATIONS.—Section 104(b) of CERCLA is amended by inserting "(1) INFORMATION; STUDIES AND INVESTIGATIONS.—" after "(b)" and by adding at the end thereof the following new paragraph:

"(2) COORDINATION OF INVESTIGATIONS.—The President shall promptly notify the appropriate Federal and State natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State trustees.".

(e) INITIAL OBLIGATION OF FUND.—

(1) LIMITATION.—Section 104(c)(1) of CERCLA is amended by striking out "$1,000,000" and "six months" and inserting in lieu thereof "$2,000,000" and "12 months", respectively.

(2) CONTINUED RESPONSE.—Section 104(c)(1) of CERCLA is amended by inserting before "obligations" the following: "or (C) continued response action is otherwise appropriate and consistent with the remedial action to be taken".

(f) FACILITIES OWNED AND OPERATED BY STATES.—Paragraph (2) of section 104(c) of CERCLA is amended by striking out "(ii) at least" and all that follows through the period at the end thereof and inserting "(ii) 50 percent (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of any sums expended in response to a release at a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of clause (ii) of this subparagraph, the term 'facility' does not include navigable waters or the beds underlying those waters.".

(g) CROSS REFERENCE TO CLEANUP STANDARDS.—Section 104(c)(4) of CERCLA is amended to read as follows:

"(4) SELECTION OF REMEDIAL ACTION.—The President shall select remedial actions to carry out this section in accordance with section 121 of this Act (relating to cleanup standards).".

(h) STATE CREDITS.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (4):

"(5) STATE CREDITS.—

"(A) GRANTING OF CREDIT.—The President shall grant a State a credit against the share of the costs, for which it is responsible under paragraph (3) with respect to a facility listed on the National Priorities List under the National Contingency Plan, for amounts expended by a State for remedial action at such facility pursuant to a contract or cooperative agreement with the President. The credit under this paragraph shall be limited to those State expenses which the President determines to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds.

"(B) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit under this paragraph shall include expenses for remedial action at a facility incurred before the listing of the facility on the National Priorities List or before a contract or cooperative agreement is entered into under subsection (d) for the facility if—

"(i) after such expenses are incurred the facility is listed on such list and a contract or cooperative agreement is entered into for the facility, and

"(ii) the President determines that such expenses would have been credited to the State under subparagraph (A) had the expenditures been made after listing of the facility on such list and after the date on which such contract or cooperative agreement is entered into.

"(C) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit under this paragraph shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 111.

"(D) STATE EXPENSES AFTER DECEMBER 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit under this paragraph shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) and only to expenses incurred after December 11, 1980, but before the date of the enactment of this paragraph.

"(E) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after the date of the enactment of this paragraph, the President may require prior approval of each item of expenditure as a condition of granting a credit under this paragraph.

"(F) USE OF CREDITS.—Credits granted under this paragraph for funds expended with respect to a facility may be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions at such facility. If the amount of funds for which credit is allowed under this paragraph exceeds

such share of costs for such facility, the State may use the amount of such excess to reduce all or part of the share of such costs at other facilities in that State. A credit shall not entitle the State to any direct payment.".

(i) TREATMENT OF CERTAIN ACTIVITIES AS MAINTENANCE OR REMEDIAL ACTION.—Section 104(c) of CERCLA is amended by adding the following new paragraphs after paragraph (5):

"(6) OPERATION AND MAINTENANCE.—For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period of up to 10 years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

"(7) LIMITATION ON SOURCE OF FUNDS FOR O&M.—During any period after the availability of funds received by the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 from tax revenues or appropriations from general revenues, the Federal share of the payment of the cost of operation or maintenance pursuant to paragraph (3)(C)(i) or paragraph (6) of this subsection (relating to operation and maintenance) shall be from funds received by the Hazardous Substance Superfund from amounts recovered on behalf of such fund under this Act.".

(j) RECONTRACTING.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (7):

"(8) RECONTRACTING.—The President is authorized to undertake or continue whatever interim remedial actions the President determines to be appropriate to reduce risks to public health or the environment where the performance of a complete remedial action requires recontracting because of the discovery of sources, types, or quantities of hazardous substances not known at the time of entry into the original contract. The total cost of interim actions undertaken at a facility pursuant to this paragraph shall not exceed $2,000,000.".

(k) SITING.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (8):

"(9) SITING.—Effective 3 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which—

"(A) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year

period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

"(B) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,

"(C) are acceptable to the President, and

"(D) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act.".

(l) COOPERATIVE AGREEMENTS WITH STATES.—Section 104(d)(1) of CERCLA is amended to read as follows:

"(1) COOPERATIVE AGREEMENTS.—

"(A) STATE APPLICATIONS.—A State or political subdivision thereof or Indian tribe may apply to the President to carry out actions authorized in this section. If the President determines that the State or political subdivision or Indian tribe has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 105(a)(8) and to carry out related enforcement actions, the President may enter into a contract or cooperative agreement with the State or political subdivision or Indian tribe to carry out such actions. The President shall make a determination regarding such an application within 90 days after the President receives the application.

"(B) TERMS AND CONDITIONS.—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the President may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

"(C) REIMBURSEMENTS.—Any State which expended funds during the period beginning September 30, 1985, and ending on the date of the enactment of this subparagraph for response actions at any site included on the National Priorities List and subject to a cooperative agreement under this Act shall be reimbursed for the share of costs of such actions for which the Federal Government is responsible under this Act.".

(m) INFORMATION GATHERING AND ACCESS AUTHORITIES.—Section 104(e) of CERCLA is amended by redesignating paragraph (2) as paragraph (7) and aligning the margin of such paragraph with paragraphs (1) through (6) of such subsection, by inserting "CONFIDENTIALITY OF INFORMATION.—" before "(A) Any records", by striking out paragraph (1), and by striking out "(e)" and inserting in lieu thereof the following:

"(e) INFORMATION GATHERING AND ACCESS.—

"(1) ACTION AUTHORIZED.—Any officer, employee, or representative of the President, duly designated by the President, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, property, or location or, in the case of paragraph (3) or (4), at any vessel, facility, establishment, place, property, or location which is adjacent to the vessel, facility, establishment, place, property, or location referred to in such paragraph (3) or (4). Any duly designated officer, employee, or representative of a State or political subdivision under a contract or cooperative agreement under subsection (d)(1) is also authorized to take

such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title.

"(2) ACCESS TO INFORMATION.—Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

"(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

"(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

"(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either (i) shall grant any such officer, employee, or representative access at all reasonable times to any vessel, facility, establishment, place, property, or location to inspect and copy all documents or records relating to such matters or (ii) shall copy and furnish to the officer, employee, or representative all such documents or records, at the option and expense of such person.

"(3) ENTRY.—Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following:

"(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from.

"(B) Any vessel, facility, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

"(C) Any vessel, facility, establishment, or other place or property where such release is or may be threatened.

"(D) Any vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title.

"(4) INSPECTION AND SAMPLES.—

"(A) AUTHORITY.—Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any vessel, facility, establishment, or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances

or pollutants or contaminants. Each such inspection shall be completed with reasonable promptness.

"(B) SAMPLES.—If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

"(5) COMPLIANCE ORDERS.—

"(A) ISSUANCE.—If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the President may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

"(B) COMPLIANCE.—The President may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

"(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

"(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

"(6) OTHER AUTHORITY.—Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.".

(n) BASIS FOR WITHHOLDING INFORMATION.—Paragraph (7) of section 104(e) of CERCLA (formerly paragraph (2), as redesignated by subsection (l) of this section) is amended by adding the following new subparagraphs at the end thereof:

"(E) No person required to provide information under this Act may claim that the information is entitled to protection

under this paragraph unless such person shows each of the following:

"(i) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee established under title III of the Amendments and Reauthorization Act of 1986, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

"(ii) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

"(iii) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

"(iv) The specific chemical identity, if sought to be protected, is not readily discoverable through reverse engineering.

"(F) The following information with respect to any hazardous substance at the facility or vessel shall not be entitled to protection under this paragraph:

"(i) The trade name, common name, or generic class or category of the hazardous substance.

"(ii) The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees celsius.

"(iii) The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.

"(iv) The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this subsection.

"(v) The location of disposal of any waste stream.

"(vi) Any monitoring data or analysis of monitoring data pertaining to disposal activities.

"(vii) Any hydrogeologic or geologic data.

"(viii) Any groundwater monitoring data.".

(o) ACQUISITION OF PROPERTY.—

(1) IN GENERAL.—Section 104 of CERCLA is amended by adding the following new subsection at the end thereof:

"(j) ACQUISITION OF PROPERTY.—

"(1) AUTHORITY.—The President is authorized to acquire, by purchase, lease, condemnation, donation, or otherwise, any real property or any interest in real property that the President in his discretion determines is needed to conduct a remedial action under this Act. There shall be no cause of action to compel the President to acquire any interest in real property under this Act.

"(2) STATE ASSURANCE.—The President may use the authority of paragraph (1) for a remedial action only if, before an interest in real estate is acquired under this subsection, the State in which the interest to be acquired is located assures the Presi-

dent, through a contract or cooperative agreement or otherwise, that the State will accept transfer of the interest following completion of the remedial action.

"(3) EXEMPTION.—No Federal, State, or local government agency shall be liable under this Act solely as a result of acquiring an interest in real estate under this subsection.".

SEC. 105. NATIONAL CONTINGENCY PLAN.

(a) SUBSECTION (a) OF SECTION 105.—Section 105 of CERCLA is amended as follows:

(1) HEADING.—Insert "(a) REVISION AND REPUBLICATION.—" after "105.".

(2) HAZARD RANKING SYSTEM.—In paragraph (8)(A) insert the following after "ecosystems,": "the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release,".

(3) NATIONAL PRIORITY LIST.—In paragraph (8)(B):

(A) Strike out "at least four hundred of".

(B) Strike out "facilities at least" and insert in lieu thereof "facilities".

(C) Insert after "in such State." the following: "A State shall be allowed to designate its highest priority facility only once.".

(4) CONFORMING AMENDMENT.—In paragraph (9) insert after "therefor" the following: "and including consideration of minority firms in accordance with subsection (f)".

(5) STANDARDS AND PROCEDURES FOR INNOVATIVE TREATMENT TECHNOLOGIES.—Strike out "and" at the end of paragraph (8), strike out the period at the end of paragraph (9) and insert in lieu thereof "; and", and insert after paragraph (9) the following new paragraph:

"(10) standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for utilization in response actions authorized by this Act.".

(b) NEW SUBSECTIONS.—Section 105 of CERCLA is amended by adding the following new subsections at the end thereof:

"(b) REVISION OF PLAN.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as 'the National Hazardous Substance Response Plan' shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this Act which are consistent with amendments made by the Superfund Amendments and Reauthorization Act of 1986 relating to the selection of remedial action.

"(c) HAZARD RANKING SYSTEM.—

"(1) REVISION.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986 and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, United States Code, the President shall by rule promulgate amend-

ments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than 24 months after enactment of the Superfund Amendments and Reauthorization Act of 1986. Such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priorities List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue in full force and effect.

"(2) HEALTH ASSESSMENT OF WATER CONTAMINATION RISKS.—In carrying out this subsection, the President shall ensure that the human health risks associated with the contamination or potential contamination (either directly or as a result of the runoff of any hazardous substance or pollutant or contaminant from sites or facilities) of surface water are appropriately assessed where such surface water is, or can be, used for recreation or potable water consumption. In making the assessment required pursuant to the preceding sentence, the President shall take into account the potentia! migration of any hazardous substance or pollutant or contaminant through such surface water to downstream sources of drinking water.

"(3) REEVALUATION NOT REQUIRED.—The President shall not be required to reevaluate, after the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986, the hazard ranking of any facility which was evaluated in accordance with the criteria under this section before the effective date of the amendments to the hazard ranking system under this subsection and which was assigned a national priority under the National Contingency Plan.

"(4) NEW INFORMATION.—Nothing in paragraph (3) shall preclude the President from taking new information into account in undertaking response actions under this Act.

"(d) PETITION FOR ASSESSMENT OF RELEASE.—Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the President has not previously conducted a preliminary assessment of such release, the President shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the President shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) to determine the national priority of such release or threatened release.

"(e) RELEASES FROM EARLIER SITES.—Whenever there has been, after January 1, 1985, a significant release of hazardous substances

or pollutants or contaminants from a site which is listed by the President as a 'Site Cleaned Up To Date' on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List, without application of the hazard ranking system.

"(f) MINORITY CONTRACTORS.—In awarding contracts under this Act, the President shall consider the availability of qualified minority firms. The President shall describe, as part of any annual report submitted to the Congress under this Act, the participation of minority firms in contracts carried out under this Act. Such report shall contain a brief description of the contracts which have been awarded to minority firms under this Act and of the efforts made by the President to encourage the participation of such firms in programs carried out under this Act.

"(g) SPECIAL STUDY WASTES.—

"(1) APPLICATION—This subsection applies to facilities—

"(A) which as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986 were not included on, or proposed for inclusion on, the National Priorities List; and

"(B) at which special study wastes described in paragraph (2), (3)(A)(ii) or (3)(A)(iii) of section 3001(b) of the Solid Waste Disposal Act are present in significant quantities, including any such facility from which there has been a release of a special study waste.

"(2) CONSIDERATIONS IN ADDING FACILITIES TO NPL.—Pending revision of the hazard ranking system under subsection (c), the President shall consider each of the following factors in adding facilities covered by this section to the National Priorities List:

"(A) The extent to which hazard ranking system score for the facility is affected by the presence of any special study waste at, or any release from, such facility.

"(B) Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from such facility, the extent of or potential for release of such hazardous constituents, the exposure or potential exposure to human population and the environment, and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at such facility. This subparagraph refers only to available information on actual concentrations of hazardous substances and not on the total quantity of special study waste at such facility.

"(3) SAVINGS PROVISIONS.—Nothing in this subsection shall be construed to limit the authority of the President to remove any facility which as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986 is included on the National Priorities List from such List, or not to list any facility which as of such date is proposed for inclusion on such list.

"(4) INFORMATION GATHERING AND ANALYSIS.—Nothing in this Act shall be construed to preclude the expenditure of monies from the Fund for gathering and analysis of informa-

tion which will enable the President to consider the specific factors required by paragraph (2).".

SEC. 106. REIMBURSEMENT.

Section 106(b) of CERCLA is amended as follows:

(1) Insert "(1)" after "(b)".

(2) Strike out "who willfully" and insert "who, without sufficient cause, willfully".

(3) Add at the end thereof the following new paragraph:

"(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within 60 days after completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954.

"(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund.

"(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

"(D) A petitioner who is liable for response costs under section 107(a) may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

"(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with subsections (a) and (d) of section 2412 of title 28 of the United States Code.".

SEC. 107. LIABILITY.

(a) FOREIGN VESSELS.—Section 107(a)(1) of CERCLA is amended by striking out "(otherwise subject to the jurisdiction of the United States)".

(b) RECOVERABLE COSTS AND DAMAGES.—Section 107(a) of CERCLA is amended by striking out "and" at the end of subparagraph (B), striking out the period at the end of subparagraph (C) and inserting "; and" and inserting at the end thereof the following:

"(D) the costs of any health assessment or health effects study carried out under section 104(i).

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954. For purposes of applying such amendments to interest under this subsection, the term 'comparable maturity' shall be determined with reference to the date on which interest accruing under this subsection commences.".

(c) RENDERING CARE OR ADVICE; EMERGENCY RESPONSE ACTIONS.—Section 107(d) of CERCLA is amended to read as follows:

"(d) RENDERING CARE OR ADVICE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no person shall be liable under this title for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan ('NCP') or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

"(2) STATE AND LOCAL GOVERNMENTS.—No State or local government shall be liable under this title for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

"(3) SAVINGS PROVISION.—This subsection shall not alter the liability of any person covered by the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section with respect to the release or threatened release concerned.".

(d) NATURAL RESOURCES.—

(1) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—Section 107(f) of CERCLA is amended by inserting "(1) NATURAL RESOURCES LIABILITY.—" after "(f)" and by adding at the end thereof the following new paragraphs:

"(2) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—

"(A) FEDERAL.—The President shall designate in the National Contingency Plan published under section 105 of this Act the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Federal Water Pollution Control Act. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this Act

and such section 311 for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship.

"(B) STATE.—The Governor of each State shall designate State officials who may act on behalf of the public as trustees for natural resources under this Act and section 311 of the Federal Water Pollution Control Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and such section 311 for those natural resources under their trusteeship.

"(C) REBUTTABLE PRESUMPTION.—Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Federal Water Pollution Control Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act or section 311 of the Federal Water Pollution Control Act.".

(2) USE OF RECOVERED FUNDS.—Section 107(f)(1) of CERCLA (as designated by paragraph (1) of this subsection) is amended by striking out the third sentence and inserting in lieu thereof the following: "Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this Act for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource".

(3) DEADLINE FOR SECTION 301 REGULATIONS.—Section 301(c)(1) of CERCLA is amended by adding the following at the end thereof: "Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986.".

(e) FEDERAL AGENCIES.—Section 107(g) of CERCLA is amended to read as follows:

"(g) FEDERAL AGENCIES.—For provisions relating to Federal agencies, see section 120 of this Act."

(f) FEDERAL LIEN.—Section 107 of CERCLA is amended by adding at the end thereof the following new subsection:

"(l) FEDERAL LIEN.—

"(1) IN GENERAL.—All costs and damages for which a person is liable to the United States under subsection (a) of this section

(other than the owner or operator of a vessel under paragraph (1) of subsection (a)) shall constitute a lien in favor of the United States upon all real property and rights to such property which—

"(A) belong to such person; and

"(B) are subject to or affected by a removal or remedial action.

"(2) DURATION.—The lien imposed by this subsection shall arise at the later of the following:

"(A) The time costs are first incurred by the United States with respect to a response action under this Act.

"(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113.

"(3) NOTICE AND VALIDITY.—The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of this subsection, the terms 'purchaser' and 'security interest' shall have the definitions provided under section 6323(h) of the Internal Revenue Code of 1954.

"(4) ACTION IN REM.—The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

"(m) MARITIME LIEN.—All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) with respect to a release or threatened release from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found. Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.".

SEC. 108. FINANCIAL RESPONSIBILITY.

(a) EVIDENCE OF FINANCIAL RESPONSIBILITY.—Section 108(b)(2) of CERCLA is amended by adding the following at the end thereof: "Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.".

(b) PHASE-IN PERIOD.—Section 108(b)(3) of CERCLA is amended by striking out "over a period of not less than three and no more than six years" and inserting in lieu thereof "as quickly as can reasonably be achieved but in no event more than 4 years".

(c) DIRECT ACTION; LIABILITY.—Subsections (c) and (d) of section 108 of CERCLA are amended to read as follows:

"(c) DIRECT ACTION.—

"(1) RELEASES FROM VESSELS.—In the case of a release or threatened release from a vessel, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such vessel under subsection (a). In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that the guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

"(2) RELEASES FROM FACILITIES.—In the case of a release or threatened release from a facility, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such facility under subsection (b), if the person liable under section 107 is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a person liable under section 107 who is likely to be solvent at the time of judgment. In the case of any action pursuant to this paragraph, the guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and all rights and defenses which would have been available to the guarantor if an action had been brought against the guarantor by such person.

"(d) LIMITATION OF GUARANTOR LIABILITY.—

"(1) TOTAL LIABILITY.—The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability under section 107 for the purpose of satisfying the requirement for evidence of financial responsibility.

"(2) OTHER LIABILITY.—Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 107 of this Act or other applicable law.".

SEC. 109. PENALTIES.

(a) VIOLATIONS AND CRIMINAL PENALTIES.—

(1) NOTICE.—Section 103(b) of CERCLA is amended as follows:

(A) Insert after "knowledge of such release" the following: "or who submits in such a notification any information which he knows to be false or misleading".

(B) Strike out "not more than $10,000 or imprisoned for not more than one year, or both" and insert in lieu thereof "in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both".

(2) DESTRUCTION OF RECORDS.—Section 103(d)(2) of CERCLA is amended by striking out "not more than $20,000, or imprisoned for not more than one year or both." and inserting in lieu thereof "in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both.".

(3) FALSE INFORMATION.—Section 112(b)(1) of CERCLA is amended by striking out "up to $5,000 or imprisoned for not more than one year, or both" and inserting in lieu thereof "in accordance with the applicable provisions of of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both".

(b) SECTION 106 PENALTY.—Section 106(b) of CERCLA is amended by striking out "$5,000" and inserting in lieu thereof "$25,000".

(c) CIVIL PENALTIES AND AWARDS.—Section 109 of CERCLA is amended to read as follows:

"SEC. 109. CIVIL PENALTIES AND AWARDS.

"(a) CLASS I ADMINISTRATIVE PENALTY.—

"(1) VIOLATIONS.—A civil penalty of not more than $25,000 per violation may be assessed by the President in the case of any of the following—

"(A) A violation of the requirements of section 103(a) or (b) (relating to notice).

"(B) A violation of the requirements of section 103(d)(2) (relating to destruction of records, etc.).

"(C) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

"(D) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

"(E) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

"(2) NOTICE AND HEARINGS.—No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

"(3) DETERMINING AMOUNT.—In determining the amount of any penalty assessed pursuant to this subsection, the President shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

"(4) REVIEW.—Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President. The President shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the President may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

"(5) SUBPOENAS.—The President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(b) CLASS II ADMINISTRATIVE PENALTY.—A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the President in the case of any of the following—

"(1) A violation of the notice requirements of section 103(a) or (b).

"(2) A violation of section 103(d)(2) (relating to destruction of records, etc.).

"(3) A violation of the requirements of section 103 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

"(4) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

"(5) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for hearing on the record in accordance with section 554 of title 5 of the United States Code. In any proceeding for the assessment of a civil penalty under this subsection the President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures. Any person who requested a hearing with respect to a civil penalty under this subsection and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(c) JUDICIAL ASSESSMENT.—The President may bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation (or failure or refusal) continues in the case of any of the following—

"(1) A violation of the notice requirements of section 103(a) or (b).

"(2) A violation of section 103(d)(2) (relating to destruction of records, etc.).

"(3) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

"(4) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

"(5) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

In the case of a second or subsequent violation (or failure or refusal), the amount of such penalty may be not more than $75,000 for each day during which the violation (or failure or refusal) continues. For additional provisions providing for judicial assessment of

civil penalties for failure to comply with a request or order under section 104(e) (relating to information gathering and access authorities), see section 104(e).

"(d) AWARDS.—The President may pay an award of up to $10,000 to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under this Act, including any violation of section 103 and any other violation referred to in this section. The President shall, by regulation, prescribe criteria for such an award and may pay any award under this subsection from the Fund, as provided in section 111.

"(e) PROCUREMENT PROCEDURES—Notwithstanding any other provision of law, any executive agency may use competitive procedures or procedures other than competitive procedures to procure the services of experts for use in preparing or prosecuting a civil or criminal action under this Act, whether or not the expert is expected to testify at trial. The executive agency need not provide any written justification for the use of procedures other than competitive procedures when procuring such expert services under this Act and need not furnish for publication in the Commerce Business Daily or otherwise any notice of solicitation or synopsis with respect to such procurement.

"(f) SAVINGS CLAUSE.—Action taken by the President pursuant to this section shall not affect or limit the President's authority to enforce any provisions of this Act.".

SEC. 110. HEALTH-RELATED AUTHORITIES.

Section 104(i) of CERCLA is amended as follows:

(1) Insert "(1)" after "(i)" and redesignate paragraphs (1), (2), (3), (4), and (5) as subparagraphs (A), (B), (C), (D), and (E).

(2) In paragraph (1), strike "and" after "Health Administration," and insert after "Social Security Administration," the following: "the Secretary of Transportation, and appropriate State and local health officials,".

(3) Insert after "chromosomal testing" in subparagraph (D)(as redesignated by paragraph (1) of this subsection) the following: "where appropriate".

(4) Add the following new paragraphs at the end thereof:

"(2)(A) Within 6 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) and the Administrator of the Environmental Protection Agency ("EPA") shall prepare a list, in order of priority, of at least 100 hazardous substances which are most commonly found at facilities on the National Priorities List and which, in their sole discretion, they determine are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under this section is under consideration.

"(B) Within 24 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of ATSDR and the Administrator of EPA shall revise the list prepared

under subparagraph (A). Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. In each of the 3 consecutive 12-month periods that follow, the Administrator of ATSDR and the Administrator of EPA shall revise, in the same manner as provided in the 2 preceding sentences, such list to include not fewer than 25 additional hazardous substances per revision. The Administrator of ATSDR and the Administrator of EPA shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in subparagraph (A).

"(3) Based on all available information, including information maintained under paragraph (1)(B) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to paragraph (2). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Administrator of EPA. Such profiles shall include, but not be limited to each of the following:

"(A) An examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

"(B) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

"(C) Where appropriate, an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans.

Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles required to be prepared under this paragraph for those hazardous substances listed under subparagraph (A) of paragraph (2) shall be completed, at a rate of no fewer than 25 per year, within 4 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986. A profile required on a substance listed pursuant to subparagraph (B) of paragraph (2) shall be completed within 3 years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

"(4) The Administrator of the ATSDR shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Administrator of EPA, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this Act.

"(5)(A) For each hazardous substance listed pursuant to paragraph (2), the Administrator of ATSDR (in consultation with the Administrator of EPA and other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator of ATSDR, in cooperation with the Director of the National Toxicology Program, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Before assuring the initiation of such program, the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act on the types of research that should be done. Such program shall include, to the extent necessary to supplement existing information, but shall not be limited to—

"(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

"(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

"(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

"(iv) where there is a possibility of obtaining human data, the collection of such information.

"(B) In assessing the need to perform laboratory and other studies, as required by subparagraph (A), the Administrator of ATSDR shall consider—

"(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

"(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by paragraph (3); and

"(iii) such other scientific and technical factors as the Administrator of ATSDR may determine are necessary for the effective implementation of this subsection.

"(C) In the development and implementation of any research program under this paragraph, the Administrator of ATSDR and the Administrator of EPA shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

"(D) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and

processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Within 1 year after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act, and recovery of such costs from responsible parties under this Act.

"(6)(A) The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 105. Such health assessment shall be completed not later than December 10, 1988, for each facility proposed for inclusion on such list prior to the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986 or not later than one year after the date of proposal for inclusion on such list for each facility proposed for inclusion on such list after such date of enactment.

"(B) The Administrator of ATSDR may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator of ATSDR providing such information and requesting a health assessment. If such a petition is submitted and the Administrator of ATSDR does not initiate a health assessment, the Administrator of ATSDR shall provide a written explanation of why a health assessment is not appropriate.

"(C) In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in subparagraph (F). In determining the priorities for conducting health assessments under this subsection, the Administrator of ATSDR shall consider the National Priorities List schedules and the needs of the Environmental Protection Agency and other Federal agencies pursuant to schedules for remedial investigation and feasibility studies.

"(D) Where a health assessment is done at a site on the National Priorities List, the Administrator of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

"(E) Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator of EPA and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator

of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

"(F) For the purposes of this subsection and section 111(c)(4), the term 'health assessments' shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

"(G) The purpose of health assessments under this subsection shall be to assist in determining whether actions under paragraph (11) of this subsection should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under paragraph (7), establishing a registry under paragraph (8), establishing a health surveillance program under paragraph (9), or through other means. In using the results of health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question.

"(H) At the completion of each health assessment, the Administrator of ATSDR shall provide the Administrator of EPA and each affected State with the results of such assessment, together with any recommendations for further actions under this subsection or otherwise under this Act. In addition, if the health assessment indicates that the release or threatened release concerned may pose a serious threat to human health or the environment, the Administrator of ATSDR shall so notify the Administrator of EPA who shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in section 105(a)(8)(A) to determine whether the site shall be placed on the National Priorities List or, if the site is already on the list, the Administrator of ATSDR may recommend to the Administrator of EPA that the site be accorded a higher priority.

"(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to deter-

mine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

"(B) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release. If a significant excess of disease in a population is identified, the letter of transmittal of such study shall include an assessment of other risk factors, other than a release, that may, in the judgment of the peer review group, be associated with such disease, if such risk factors were not taken into account in the design or conduct of the study.

"(8) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator of ATSDR shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

"(9) Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under paragraph (6), an epidemiologic study conducted under paragraph (7), or an exposure registry that has been established under paragraph (8), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

"(A) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

"(B) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

"(10) Two years after the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986, and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of EPA and to the Congress a report on the results of the activities of ATSDR regarding—

"(A) health assessments and pilot health effects studies conducted;

"(B) epidemiologic studies conducted;

"(C) hazardous substances which have been listed under paragraph (2), toxicological profiles which have been developed, and toxicologic testing which has been conducted or which is being conducted under this subsection;

"(D) registries established under paragraph (8); and

"(E) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of haz-

ardous substances due to releases from facilities covered by this Act or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health effects in humans.

"(11) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this Act, including, but not limited to—

"(A) provision of alternative water supplies, and

"(B) permanent or temporary relocation of individuals.

In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the President to determine a significant human exposure level with respect to a hazardous substance, the President may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance to such level as the President deems necessary to protect human health.

"(12) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR, or the Administrator of EPA to exercise any authority vested in the President, the Administrator of ATSDR or the Administrator of EPA under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act) or the response and abatement authorities of this Act.

"(13) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only after appropriate peer review. Such peer review shall be completed, to the maximum extent practicable, within a period of 60 days. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator of ATSDR or the Administrator of EPA, as appropriate, on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry, or by the Environmental Protection Agency, as appropriate.

"(14) In the implementation of this subsection and other health-related authorities of this Act, the Administrator of ATSDR shall assemble, develop as necessary, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through such means as the Administrator of ATSDR deems appropriate.

"(15) The activities of the Administrator of ATSDR described in this subsection and section 111(c)(4) shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

"(16) The President shall provide adequate personnel for ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

"(17) In accordance with section 120 (relating to Federal facilities), the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

"(18) If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollutant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.".

SEC. 111. USES OF FUND.

(a) AMOUNT OF FUND.—Section 111 of CERCLA is amended by inserting after "(a)" the following: "IN GENERAL.—For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986 not more than $8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and such sums shall remain available until expended. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund).".

(b) USES OF FUNDS UNDER SECTION 111(a).—Section 111(a) of CERCLA is amended by striking out "; and" at the end of paragraph (3) and inserting a period, by striking out the semicolons at the end of paragraphs (1) and (2) and inserting in lieu thereof a period, by capitalizing the first letter in paragraphs (1) through (4), and by adding at the end thereof the following:

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

"(6) LEAD CONTAMINATED SOIL.—Payment of not to exceed $15,000,000 for the costs of a pilot program for removal, decontamination, or other action with respect to lead-contaminated soil in one to three different metropolitan areas.".

(c) NATURAL RESOURCE DAMAGE CLAIMS.—

(1) LIMITATION.—Section 111(b) of CERCLA is amended by inserting "(1) IN GENERAL.—" after "(b)" and by adding at the end thereof the following new paragraph:

"(2) LIMITATION ON PAYMENT OF NATURAL RESOURCE CLAIMS.—

"(A) GENERAL REQUIREMENTS.—No natural resource claim may be paid from the Fund unless the President determines that the claimant has exhausted all administrative and judicial remedies to recover the amount of such claim from persons who may be liable under section 107.

"(B) DEFINITION.—As used in this paragraph, the term 'natural resource claim' means any claim for injury to, or destruction or loss of, natural resources. The term does not include any claim for the costs of natural resource damage assessment.".

(2) CONFORMING AMENDMENT.—Section 111(h) of CERCLA is repealed.

(d) SUBSECTION (c) AMENDMENTS.—

(1) SECTION 111(c)(4).—Section 111(c)(4) of CERCLA is amended by striking out "the costs of epidemiologic studies" and inserting "Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 104(i), including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles".

(2) NEW PARAGRAPHS IN SECTION 111(c).—Section 111(c) of CERCLA is amended by striking out "; and" at the end of paragraph (5) and inserting a period, by striking out the semicolons at the end of paragraphs (1) through (4) and inserting in lieu thereof a period, by capitalizing the first letter in paragraphs (1), (2), (3), (5), and (6), and by adding at the end thereof the following:

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

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

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

"(10) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS UNDER SECTION 311.—The cost of carrying out section 311 (relating to research, development, and demonstration), except that the amounts available for such purposes shall not exceed the amounts specified in subsection (n) of this section.

"(11) LOCAL GOVERNMENT REIMBURSEMENT.—Reimbursements to local governments under section 123, except that during the 5-fiscal-year period beginning October 1, 1986, not more than 0.1

percent of the total amount appropriated from the Fund may be used for such reimbursements.

"(12) WORKER TRAINING AND EDUCATION GRANTS.—The costs of grants under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 for training and education of workers to the extent that such costs do not exceed $10,000,000 for each of the fiscal years 1987, 1988, 1989, 1990, and 1991.

"(13) AWARDS UNDER SECTION 109.—The costs of any awards granted under section 109(d).

"(14) LEAD POISONING STUDY.—The cost of carrying out the study under subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986 (relating to lead poisoning in children).".

(e) LIMITATION ON CERTAIN CLAIMS.—Section 111(e)(2) of CERCLA is amended by adding at the end the following: "No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances.".

(f) FUND USE OUTSIDE FEDERAL PROPERTY BOUNDARIES.—Section 111(e)(3) of CERCLA is amended by inserting the following before the period: "; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party".

(g) INSPECTOR GENERAL.—Section 111(k) of CERCLA is amended to read as follows:

"(k) INSPECTOR GENERAL.—In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this Act shall conduct an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a sample of agreements with States (in accordance with the provisions of the Single Audit Act) carrying out response actions under this title and an examination of remedial investigations and feasibility studies prepared for remedial actions. The Inspector General shall submit to the Congress an annual report regarding the audit report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each department, agency, or instrumentality of the United States shall cooperate with its inspector general in carrying out this subsection.".

(h) NEW SUBSECTIONS.—Section 111 of CERCLA is amended by adding after subsection (l) the following new subsections:

"(m) AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.—There shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) and section 104(i) not less than $50,000,000 per fiscal year for each of fiscal years 1987 and 1988,

not less than $55,000,000 for fiscal year 1989, and not less than $60,000,000 per fiscal year for each of fiscal years 1990 and 1991. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund.

"(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—

"(1) SECTION 311(b).—For each of the fiscal years 1987, 1988, 1989, 1990, and 1991, not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) (relating to research, development, and demonstration) other than basic research. Such amounts shall remain available until expended.

"(2) SECTION 311(a).—From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) (relating to hazardous substance research, demonstration, and training activities):

"(A) For the fiscal year 1987, $3,000,000.
"(B) For the fiscal year 1988, $10,000,000.
"(C) For the fiscal year 1989, $20,000,000.
"(D) For the fiscal year 1990, $30,000,000.
"(E) For the fiscal year 1991, $35,000,000.

No more than 10 percent of such amounts shall be used for training under section 311(a) in any fiscal year.

"(3) SECTION 311(d).—For each of the fiscal years 1987, 1988, 1989, 1990, and 1991, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d) (relating to university hazardous substance research centers).

"(o) NOTIFICATION PROCEDURES FOR LIMITATIONS ON CERTAIN PAYMENTS.—Not later than 90 days after the enactment of this subsection, the President shall develop and implement procedures to adequately notify, as soon as practicable after a site is included on the National Priorities List, concerned local and State officials and other concerned persons of the limitations, set forth in subsection (a)(2) of this section, on the payment of claims for necessary response costs incurred with respect to such site.".

(i) AUTHORIZATION OF APPROPRIATIONS.—Section 111 of CERCLA is amended by adding the following subsection after subsection (o):

"(p) GENERAL REVENUE SHARE OF SUPERFUND.—

"(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

"(A) For fiscal year 1987, $212,500,000.
"(B) For fiscal year 1988, $212,500,000.
"(C) For fiscal year 1989, $212,500,000.
"(D) For fiscal year 1990, $212,500,000.
"(E) For fiscal year 1991, $212,500,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be ap-

propriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980) as has not been appropriated before the beginning of the fiscal year involved.

"(2) COMPUTATION.—The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 9507(b)(2) of the Internal Revenue Code of 1986 for the prior fiscal year.".

SEC. 112. CLAIMS PROCEDURE.

(a) CLAIMS AGAINST THE FUND FOR RESPONSE COSTS.—Section 112(a) of CERCLA is amended to read as follows:

"(a) CLAIMS AGAINST THE FUND FOR RESPONSE COSTS.—No claim may be asserted against the Fund pursuant to section 111(a) unless such claim is presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107. In any case where the claim has not been satisfied within 60 days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim."

(b) PROCEDURES.—Section 112(b) is amended by striking "(b)(1)" and inserting "(b)(1) PRESCRIBING FORMS AND PROCEDURES.—" and by striking paragraphs (2), (3), and (4) and inserting the following:

"(2) PAYMENT OR REQUEST FOR HEARING.—The President may, if satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim, except that no claim may be awarded to the extent that a judicial judgment has been made on the costs that are the subject of the claim. If the President declines to pay all or part of the claim, the claimant may, within 30 days after receiving notice of the President's decision, request an administrative hearing.

"(3) BURDEN OF PROOF.—In any proceeding under this subsection, the claimant shall bear the burden of proving his claim.

"(4) DECISIONS.—All administrative decisions made hereunder shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to an administrative law judge, unless all the parties to the claim agree in writing to an extension or unless the President, in his discretion, extends the time limit for a period not to exceed sixty days.

"(5) FINALITY AND APPEAL.—All administrative decisions hereunder shall be final, and any party to the proceeding may appeal a decision within 30 days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the release or threat of release took place. In any such appeal, the decision shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of discretion.

"(6) PAYMENT.—Within 20 days after the expiration of the appeal period for any administrative decision concerning an award, or within 20 days after the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.".

(c) STATUTE OF LIMITATIONS.—Section 112(d) of CERCLA is amended to read as follows:

"(d) STATUTE OF LIMITATIONS.—

"(1) CLAIMS FOR RECOVERY OF COSTS.—No claim may be presented under this section for recovery of the costs referred to in section 107(a) after the date 6 years after the date of completion of all response action.

"(2) CLAIMS FOR RECOVERY OF DAMAGES.—No claim may be presented under this section for recovery of the damages referred to in section 107(a) unless the claim is presented within 3 years after the later of the following:

"(A) The date of the discovery of the loss and its connection with the release in question.

"(B) The date on which final regulations are promulgated under section 301(c).

"(3) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

"(B) against an incompetent person until the earlier of the date on which such person's incompetency ends or the date on which a legal representative is duly appointed for such incompetent person.".

(d) DOUBLE RECOVERY PROHIBITED.— Section 112 of CERCLA is amended by adding the following new subsection at the end thereof:

"(f) DOUBLE RECOVERY PROHIBITED.—Where the President has paid out of the Fund for any response costs or any costs specified under section 111(c)(1) or (2), no other claim may be paid out of the Fund for the same costs.".

SEC. 113. LITIGATION, JURISDICTION, AND VENUE.

(a) NATIONWIDE SERVICE OF PROCESS.—Section 113 of CERCLA is amended by adding the following new subsection at the end thereof:

"(e) NATIONWIDE SERVICE OF PROCESS.—In any action by the United States under this Act, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.".

(b) CONTRIBUTION; STATUTE OF LIMITATIONS.—Section 113 of CERCLA is amended by adding the following new subsections after subsection (e):

"(f) CONTRIBUTION.—

"(1) CONTRIBUTION.—Any person may seek contribution from any other person who is liable or potentially liable under section 107(a), during or following any civil action under section 106 or under section 107(a). Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contri-

bution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 106 or section 107.

"(2) SETTLEMENT.—A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

"(3) PERSONS NOT PARTY TO SETTLEMENT.—(A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the State may bring an action against any person who has not so resolved its liability.

"(B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (2).

"(C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.

"(g) PERIOD IN WHICH ACTION MAY BE BROUGHT.—

"(1) ACTIONS FOR NATURAL RESOURCE DAMAGES.—Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within 3 years after the later of the following:

"(A) The date of the discovery of the loss and its connection with the release in question.

"(B) The date on which regulations are promulgated under section 301(c).

With respect to any facility listed on the National Priorities List ('NPL'), any Federal facility identified under section 120 (relating to Federal facilities), or any vessel or facility at which a remedial action under this Act is otherwise scheduled, an action for damages under this Act must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities) in lieu of the dates referred to in subparagraph (A) or (B). In no event may an action for damages under this Act with respect to such a vessel or facility be commenced (i) prior to 60 days after the Federal or State natural resource trustee provides to the President and the potentially responsible party a notice of intent to file suit, or (ii) before selection of the remedial action if the President is diligently proceeding with a remedial investigation and feasibility study under section 104(b) or section 120 (relating to Federal fa-

cilities). The limitation in the preceding sentence on commencing an action before giving notice or before selection of the remedial action does not apply to actions filed on or before the enactment of the Superfund Amendments and Reauthorization Act of 1986.

"(2) ACTIONS FOR RECOVERY OF COSTS.—An initial action for recovery of the costs referred to in section 107 must be commenced—

"(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 104(c)(1)(C) for continued response action; and

"(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 107 for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

"(3) CONTRIBUTION.—No action for contribution for any response costs or damages may be commenced more than 3 years after—

"(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

"(B) the date of an administrative order under section 122(g) (relating to de minimis settlements) or 122(h) (relating to cost recovery settlements) or entry of a judicially approved settlement with respect to such costs or damages.

"(4) SUBROGATION.—No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this title more than 3 years after the date of payment of such claim.

"(5) ACTIONS TO RECOVER INDEMNIFICATION PAYMENTS.—Notwithstanding any other provision of this subsection, where a payment pursuant to an indemnification agreement with a response action contractor is made under section 119, an action under section 107 for recovery of such indemnification payment from a potentially responsible party may be brought at any time before the expiration of 3 years from the date on which such payment is made.

"(6) MINORS AND INCOMPETENTS.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for such minor, or

"(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.".

(c) PRE-ENFORCEMENT REVIEW.—

(1) CONFORMING AMENDMENT.—Section 113(b) of CERCLA is amended by striking out "subsection" and inserting in lieu thereof "subsections" and inserting "and (h)" after "(a)".

(2) TIMING OF REVIEW; ADMINISTRATIVE RECORD.—Section 113 of CERCLA is amended by adding at the end thereof the following new subsections:

"(h) TIMING OF REVIEW.—No Federal court shall have jurisdiction under Federal law other than under section 1332 of title 28 of the United States Code (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 121 (relating to cleanup standards) to review any challenges to removal or remedial action selected under section 104, or to review any order issued under section 106(a), in any action except one of the following:

"(1) An action under section 107 to recover response costs or damages or for contribution.

"(2) An action to enforce an order issued under section 106(a) or to recover a penalty for violation of such order.

"(3) An action for reimbursement under section 106(b)(2).

"(4) An action under section 310 (relating to citizens suits) alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to a removal where a remedial action is to be undertaken at the site.

"(5) An action under section 106 in which the United States has moved to compel a remedial action.

"(i) INTERVENTION.—In any action commenced under this Act or under the Solid Waste Disposal Act in a court of the United States, any person may intervene as a matter of right when such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the President or the State shows that the person's interest is adequately represented by existing parties.

"(j) JUDICIAL REVIEW.—

"(1) LIMITATION.—In any judicial action under this Act, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

"(2) STANDARD.—In considering objections raised in any judicial action under this Act, the court shall uphold the President's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that

the decision was arbitrary and capricious or otherwise not in accordance with law.

"(3) REMEDY.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award (A) only the response costs or damages that are not inconsistent with the national contingency plan, and (B) such other relief as is consistent with the National Contingency Plan.

"(4) PROCEDURAL ERRORS.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

"(k) ADMINISTRATIVE RECORD AND PARTICIPATION PROCEDURES.—

"(1) ADMINISTRATIVE RECORD.—The President shall establish an administrative record upon which the President shall base the selection of a response action. The administrative record shall be available to the public at or near the facility at issue. The President also may place duplicates of the administrative record at any other location.

"(2) PARTICIPATION PROCEDURES.—

"(A) REMOVAL ACTION.—The President shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the President will base the selection of removal actions and on which judicial review of removal actions will be based.

"(B) REMEDIAL ACTION.—The President shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the President will base the selection of remedial actions and on which judicial review of remedial actions will be based. The procedures developed under this subparagraph shall include, at a minimum, each of the following:

"(i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

"(ii) A reasonable opportunity to comment and provide information regarding the plan.

"(iii) An opportunity for a public meeting in the affected area, in accordance with section 117(a)(2)(relating to public participation).

"(iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.

"(v) A statement of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the second sentence of section 117(d). The President shall promulgate regulations in accordance with chapter 5 of title 5 of the

United States Code to carry out the requirements of this subparagraph.

"(C) INTERIM RECORD.—Until such regulations under subparagraphs (A) and (B) are promulgated, the administrative record shall consist of all items developed and received pursuant to current procedures for selection of the response action, including procedures for the participation of interested parties and the public. The development of an administrative record and the selection of response action under this Act shall not include an adjudicatory hearing.

"(D) POTENTIALLY RESPONSIBLE PARTIES.—The President shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability.

"(l) NOTICE OF ACTIONS.—Whenever any action is brought under this Act in a court of the United States by a plaintiff other than the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator of the Environmental Protection Agency.".

SEC. 114. RELATIONSHIP TO OTHER LAW.

(a) USED OIL.—Section 114 (c) of CERCLA is amended to read as follows:

"(c) RECYCLED OIL.—

"(1) SERVICE STATION DEALERS, ETC.—No person (including the United States or any State) may recover, under the authority of subsection (a)(3) or (a)(4) of section 107, from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil, or use the authority of section 106 against a service station dealer other than a person described in subsection (a)(1) or (a)(2) of section 107, if such recycled oil—

"(A) is not mixed with any other hazardous substance, and

"(B) is stored, treated, transported, or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act and other applicable authorities.

Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release or threatened release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action.

"(2) PRESUMPTION.—Solely for the purposes of this subsection, a service station dealer may presume that a small quantity of used oil is not mixed with other hazardous substances if it—

"(A) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and

"(B) is presented, by such owner, to the dealer for collection, accumulation, and delivery to an oil recycling facility.

"(3) DEFINITION.—For purposes of this subsection, the terms 'used oil' and 'recycled oil' have the same meanings as set forth in sections 1004(36) and 1004(37) of the Solid Waste Disposal Act and regulations promulgated pursuant to that Act.

"(4) EFFECTIVE DATE.—The effective date of paragraphs (1) and (2) of this subsection shall be the effective date of regulations or standards promulgated under section 3014 of the Solid Waste Disposal Act that include, among other provisions, a requirement to conduct corrective action to respond to any releases of recycled oil under subtitle C or subtitle I of such Act.".

(b) DEFINITION OF SERVICE STATION DEALER.—Section 101 of CERCLA is amended by inserting the following at the end thereof:

"(37)(A) The term 'service station dealer' means any person—

"(i) who owns or operates a motor vehicle service station, filling station, garage, or similar retail establishment engaged in the business of selling, repairing, or servicing motor vehicles, where a significant percentage of the gross revenue of the establishment is derived from the fueling, repairing, or servicing of motor vehicles, and

"(ii) who accepts for collection, accumulation, and delivery to an oil recycling facility, recycled oil that (I) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and (II) is presented, by such owner, to such person for collection, accumulation, and delivery to an oil recycling facility.

"(B) For purposes of section 114(c), the term 'service station dealer' shall, notwithstanding the provisions of subparagraph (A), include any government agency that establishes a facility solely for the purpose of accepting recycled oil that satisfies the criteria set forth in subclauses (I) and (II) of subparagraph (A)(ii), and, with respect to recycled oil that satisfies the criteria set forth in subclauses (I) and (II), owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver such oil to an oil recycling facility.

"(C) The President shall promulgate regulations regarding the determination of what constitutes a significant percentage of the gross revenues of an establishment for purposes of this paragraph.".

SEC. 115. DELEGATION; REGULATIONS.

Section 115 of CERCLA is not amended.

SEC. 116. SCHEDULES.

Title I of CERCLA is amended by adding the following new section after section 115:

"SEC. 116. SCHEDULES.

"(a) ASSESSMENT AND LISTING OF FACILITIES.—It shall be a goal of this Act that, to the maximum extent practicable—

"(1) not later than January 1, 1988, the President shall complete preliminary assessments of all facilities that are contained (as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986) on the Comprehensive Environmental Response, Compensation, and Liability Information

System (CERCLIS) including in each assessment a statement as to whether a site inspection is necessary and by whom it should be carried out; and

"(2) not later than January 1, 1989, the President shall assure the completion of site inspections at all facilities for which the President has stated a site inspection is necessary pursuant to paragraph (1).

"(b) EVALUATION.—Within 4 years after enactment of the Superfund Amendments and Reauthorization Act of 1986, each facility listed (as of the date of such enactment) in the CERCLIS shall be evaluated if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment. The evaluation shall be in accordance with the criteria established in section 105 under the National Contingency Plan for determining priorities among release for inclusion on the National Priorities List. In the case of a facility listed in the CERCLIS after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the facility shall be evaluated within 4 years after the date of such listing if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment.

"(c) EXPLANATIONS.—If any of the goals established by subsection (a) or (b) are not achieved, the President shall publish an explanation of why such action could not be completed by the specified date.

"(d) COMMENCEMENT OF RI/FS.—The President shall assure that remedial investigations and feasibility studies (RI/FS) are commenced for facilities listed on the National Priorities List, in addition to those commenced prior to the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, in accordance with the following schedule:

"(1) not fewer than 275 by the date 36 months after the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and

"(2) if the requirement of paragraph (1) is not met, not fewer than an additional 175 by the date 4 years after such date of enactment, an additional 200 by the date 5 years after such date of enactment, and a total of 650 by the date 5 years after such date of enactment.

"(e) COMMENCEMENT OF REMEDIAL ACTION.—The President shall assure that substantial and continuous physical on-site remedial action commences at facilities on the National Priorities List, in addition to those facilities on which remedial action has commenced prior to the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, at a rate not fewer than:

"(1) 175 facilities during the first 36-month period after enactment of this subsection; and

"(2) 200 additional facilities during the following 24 months after such 36-month period.".

SEC. 117. PUBLIC PARTICIPATION.

Title I of CERCLA is amended by adding the following new section after section 116:

"SEC. 117. PUBLIC PARTICIPATION.

"(a) PROPOSED PLAN.—Before adoption of any plan for remedial action to be undertaken by the President, by a State, or by any other

person, under section 104, 106, 120, or 122, the President or State, as appropriate, shall take both of the following actions:

"(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

"(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any proposed findings under section 121(d)(4) (relating to cleanup standards). The President or the State shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan and alternative proposals considered.

"(b) FINAL PLAN.—Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

"(c) EXPLANATION OF DIFFERENCES.—After adoption of a final remedial action plan—

"(1) if any remedial action is taken,

"(2) if any enforcement action under section 106 is taken, or

"(3) if any settlement or consent decree under section 106 or section 122 is entered into,

and if such action, settlement, or decree differs in any significant respects from the final plan, the President or the State shall publish an explanation of the significant differences and the reasons such changes were made.

"(d) PUBLICATION.—For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation. In addition, each item developed, received, published, or made available to the public under this section shall be available for public inspection and copying at or near the facility at issue.

"(e) GRANTS FOR TECHNICAL ASSISTANCE.—

"(1) AUTHORITY.—Subject to such amounts as are provided in appropriations Acts and in accordance with rules promulgated by the President, the President may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility.

"(2) AMOUNT.—The amount of any grant under this subsection may not exceed $50,000 for a single grant recipient. The President may waive the $50,000 limitation in any case where

such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total of costs of the technical assistance for which such grant is made. The President may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.".

SEC. 118. MISCELLANEOUS PROVISIONS.

(a) PRIORITY FOR DRINKING WATER SUPPLIES.—Title I of CERCLA is amended by adding the following new section after section 117:

"SEC. 118. HIGH PRIORITY FOR DRINKING WATER SUPPLIES.

"For purposes of taking action under section 104 or 106 and listing facilities on the National Priorities List, the President shall give a high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply.".

(b) REMOVAL AND TEMPORARY STORAGE OF CONTAINERS OF RADON CONTAMINATED SOIL.—Not later than 90 days after the enactment of this Act, the Administrator shall make a grant of $7,500,000 to the State of New Jersey for transportation from residential areas in the State of New Jersey and temporary storage of approximately 14,000 containers of radon contaminated soil which is the subject of a remedial action for which a remedial investigation and feasibility study has been initiated before such date. Such containers shall be transported to and temporarily stored at any site in the State of New Jersey designated by the Governor of such State. For purposes of section 111(a) of CERCLA, the grant under this subsection for transportation and storage of such containers shall be treated as payment of governmental response cost incurred pursuant to section 104 of CERCLA.

(c) UNCONSOLIDATED QUATERNARY AQUIFER.—Notwithstanding any other provision of law, no person may—

(1) locate or authorize the location of a landfill, surface impoundment, waste pile, injection well, or land treatment facility over the Unconsolidated Quaternary Aquifer, or the recharge zone or streamflow source zone of such aquifer, in the Rockaway River Basin, New Jersey (as such aquifer and zones are described in the Federal Register, January 24, 1984, pages 2946–2948); or

(2) place or authorize the placement of solid waste in a landfill, surface impoundment, waste pile, injection well, or land treatment facility over such aquifer or zone.

This subsection may be enforced under sections 309(a) and (b) of the Federal Water Pollution Control Act. For purposes of section 309(c) of such Act, a violation of this subsection shall be considered a violation of section 301 of such Act.

(d) STUDY OF SHORTAGES OF SKILLED PERSONNEL.—The Comptroller General shall study the problem of shortages of skilled personnel in the Environmental Protection Agency to carry out response actions under CERCLA. In particular the Comptroller General shall study—

(1) the types of skilled personnel needed for response actions for which there are shortages in the Environmental Protection Agency,

(2) the extent of such shortages,

(3) pay differential between the public and private sectors for the skilled positions involved in response actions,

(4) the extent to which skilled personnel of Federal and State governments involved in response actions are leaving their positions for employment in the private sector,

(5) the success of programs of the Department of Defense and the Office of Personnel Management in retaining skilled personnel, and

(6) the types of training required to improve the skills of employees carrying out response actions.

The Comptroller General shall complete the study required by this subsection and submit a report on the results thereof to Congress not later than July 1, 1987.

(e) STATE REQUIREMENTS NOT APPLICABLE TO CERTAIN TRANSFERS.—No State or local requirement shall apply to the transfer and disposal of any hazardous substance or pollutant or contaminant from a facility at which a release or threatened release has occurred to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act is in effect if the following conditions apply—

(1) Such permit was issued after January 1, 1983 and before November 1, 1984.

(2) The transfer and disposal is carried out pursuant to a cooperative agreement between the Administrator and the State.

(3) The facility at which the release or threatened release has occurred is identified as the McColl Site in Fullerton, California.

The terms used in this section shall have the same meaning as when used in title I of CERCLA.

(f) STUDY OF LEAD POISONING IN CHILDREN.—(1) The Administrator of the Agency for Toxic Substances and Disease Registry shall, in consultation with the Administrator of the Environmental Protection Agency and other officials as appropriate, not later than March 1, 1987, submit to the Congress, a report on the nature and extent of lead poisoning in children from environmental sources. Such report shall include, at a minimum, the following information—

(A) an estimate of the total number of children, arrayed according to Standard Metropolitan Statistical Area or other appropriate geographic unit, exposed to environmental sources of lead at concentrations sufficient to cause adverse health effects;

(B) an estimate of the total number of children exposed to environmental sources of lead arrayed according to source or source types;

(C) a statement of the long term consequences for public health of unabated exposures to environmental sources of lead and including but not limited to, diminution in intelligence, increases in morbidity and mortality; and

(D) methods and alternatives available for reducing exposures of children to environmental sources of lead.

(2) Such report shall also score and evaluate specific sites at which children are known to be exposed to environmental sources of lead due to releases, utilizing the Hazard Ranking system of the National Priorities List.

(3) The costs of preparing and submitting the report required by this section shall be borne by the Hazardous Substance Superfund established under subchapter A of chapter 98 of Internal Revenue Code of 1954.

(g) FEDERALLY LICENSED DAM.—For purposes of CERCLA in the case of the Milltown Dam in the State of Montana licensed under part 1 of the Federal Power Act and designated as FERC license number 2543-004, if a hazardous substance, pollutant, or contaminant—

(1) has been released into the environment upstream of the dam, and

(2) has subsequently come to be located in the reservoir created by such dam

notwithstanding section 101(20) of such Act, the term "owner or operator" does not include the owner or operator of the dam unless such owner or operator is a person who would otherwise be liable for such release or threatened release under section 107 of such Act.

(h) COMMUNITY RELOCATION AT TIMES BEACH SITE.—For purposes of any Missouri dioxon site at which a temporary or permanent relocation decision has been made, or is under active consideration, by the Administrator as of the enactment of this Act, the terms "remove" and "removal" as used in CERCLA shall be deemed to include the costs of permanent relocation of residents where it is determined that such permanent relocation is cost effective or may be necessary to protect health or welfare. In the case of a business located in an area of evacuation or relocation at such facility, such terms may also include the payment of those installments of principal and interest on business debt which accrue between the date of evacuation or temporary relocation and 30 days following the date that permanent relocation is actually accomplished or, if permanent relocation is formally rejected as the appropriate response, the date on which evacuation or temporary relocation ceases. In the case of an individual unemployed as a result of such evacuation or relocation, such terms may also include the provision of assistance identical to that authorized by sections 407, 408, and 409 of the Disaster Relief Act of 1974; except that the costs of such assistance shall be paid from the Trust Fund established under amendments made to the Internal Revenue Code of 1954 by this Act. Section 104(c)(1) of CERCLA shall not apply to obligations from the Fund for permanent relocation under this paragraph.

(i) LIMITED WAIVERS IN STATE OF ILLINOIS.—

(1) MOBILE INCINERATORS.—In the case of remedial actions specifically involving mobile incinerator units in the State of Illinois, if such remedial actions are undertaken by the State

under the authority of a State Superfund law or equivalent authority, the State may, with the approval of the Administrator, waive any permit requirement under subtitle C of the Solid Waste Disposal Act which would be otherwise applicable to such action to the extent that the following conditions are met:

(A) NO TRANSFER.—The incinerator does not involve the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to an offsite facility.

(B) REMEDIAL ACTION.—The remedial action provides each of the following:

(i) Changes in the character or composition of the hazardous substance or pollutant or contaminant concerned so that it no longer presents a risk to public health.

(ii) Protection against accidental emissions during operation.

(iii) Protection of public health considering the multimedia impacts of the treatment process.

(C) PUBLIC PARTICIPATION.—The State provides procedures for public participation regarding the response action which are at least equivalent to the level of public participation procedures applicable under CERCLA and under the Solid Waste Disposal Act.

(2) EFFECT OF WAIVER.—The waiver of any permit requirement under this subsection shall not be construed to waive any standard or level of control which—

(A) is applicable to any hazardous substance or pollutant or contaminant involved in the remedial action; and

(B) would otherwise be contained in the permit.

Such waiver of any permit requirement under subtitle C of the Solid Waste Disposal Act shall only apply to the extent that the facility or remedial action involves the onsite treatment with a mobile incineration unit of waste present at such site. The waiver shall not apply to any other regulated or potentially regulated activity, including the use of the mobile incineration unit for actions not authorized by the State.

(3) EXPIRATION OF AUTHORITY.—The authority of this subsection shall terminate at the end of 3 years, unless the State demonstrates, to the satisfaction of the Administrator, that the operation of mobile incinerators in the State has sufficiently protected public health and the environment and is consistent with the criteria required for a permit under subtitle C of the Solid Waste Disposal Act.

(j) STUDY OF JOINT USE OF TRUCKS.—

(1) STUDY.—The Administrator, in consultation with the Secretary of Transportation, shall conduct a study of problems associated with the use of any vehicle for purposes other than the transportation of hazardous substances when that vehicle is used at other times for the transportation of hazardous substances. At a minimum, the Administrator shall consider—

(A) whether such joint use of vehicles should be prohibited, and

(B) whether, if such joint use is permitted, special safeguards should be taken to minimize threats to public health and the environment.

(2) REPORT.—The Administrator shall submit a report, along with recommendations, to Congress on the results of the study conducted under paragraph (1) not later than 180 days after the date of the enactment of this Act.

(k) RADON ASSESSMENT AND MITIGATION.—

(1) NATIONAL ASSESSMENT OF RADON GAS.—No later than one year after the enactment of this Act, the Administrator shall submit to the Congress a report which shall, to the extent possible—

(A) identify the locations in the United States where radon is found in structures where people normally live or work, including educational institutions;

(B) assess the levels of radon gas that are present in such structures;

(C) determine the level of radon gas and radon daughters which poses a threat to human health and assess for each location identified under subparagraph (A) the extent of the threat to human health;

(D) determine methods of reducing or eliminating the threat to human health of radon gas and radon daughters; and

(E) include guidance and public information materials based on the findings or research of mitigating radon.

(2) RADON MITIGATION DEMONSTRATION PROGRAM.—

(A) DEMONSTRATION PROGRAM.—The Administrator shall conduct a demonstration program to test methods and technologies of reducing or eliminating radon gas and radon daughters where it poses a threat to human health. The Administrator shall take into consideration any demonstration program underway in the Reading Prong of Pennsylvania, New Jersey, and New York and at other sites prior to enactment. The demonstration program under this section shall be conducted in the Reading Prong, and at such other sites as the Administrator considers appropriate.

(B) ANNUAL REPORTS.—The Administrator shall submit annual reports not later than February 1 of each year (beginning February 1, 1987) on the status of the demonstration program carried out under this subsection and on any such demonstration program initiated prior to enactment.

(C) LIABILITY.—Liability, if any, for persons undertaking activities pursuant to the radon mitigation demonstration program authorized under this subsection shall be determined under principles of existing law.

(3) CONSTRUCTION OF SECTION.—Nothing in this subsection shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this subsection. Nothing in paragraph (1) or (2) shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

(l) GULF COAST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—

(1) ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the "Center") for the purpose of conducting research to aid in more effective hazardous substance response and waste management throughout the Gulf Coast.

(2) PURPOSES OF THE CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions or in normal handling of hazardous wastes to achieve better protection of human health and the environment.

(3) OPERATION OF CENTER.—(A) For purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a university related institute involved with the improvement of waste management. Such institute shall be located in Jefferson County, Texas.

(B) The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Texas, Louisiana, Mississippi, Alabama, and Florida in order to carry out the purposes of the Center.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator for purposes of carrying out this subsection for fiscal years beginning after September 30, 1986, not more than $5,000,000.

(m) RADON PROTECTION AT CURRENT NATIONAL PRIORITIES LIST SITES .—It is the sense of the Congress that the President, in selecting response action for facilities included on the National Priorities List published under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 because of the presence of radon, is not required by statute or regulations to use fully demonstrated methods, particularly those involving the offsite transport and disposition of contaminated material, but may use innovative or alternative methods which protect human health and the environment in a more cost-effective manner.

(n) SPILL CONTROL TECHNOLOGY.—

(1) ESTABLISHMENT OF PROGRAM.—Within 180 days of enactment of this subsection, the Secretary of the United States Department of Energy is directed to carry out a program of testing and evaluation of technologies which may be utilized in responding to liquefied gaseous and other hazardous substance spills at the Liquefied Gaseous Fuels Spill Test Facility that threaten public health or the environment.

(2) TECHNOLOGY TRANSFER.—In carrying out the program established under this subsection, the Secretary shall conduct a technology transfer program that, at a minimum—

(A) documents and archives spill control technology;

(B) investigates and analyzes significant hazardous spill incidents;

(C) develops and provides generic emergency action plans;

(D) documents and archives spill test results;
(E) develops emergency action plans to respond to spills;
(F) conducts training of spill response personnel; and
(G) establishes safety standards for personnel engaged in spill response activities.

(3) CONTRACTS AND GRANTS.—The Secretary is directed to enter into contracts and grants with a nonprofit organization in Albany County, Wyoming, that is capable of providing the necessary technical support and which is involved in environmental activities related to such hazardous substance related emergencies.

(4) USE OF SITE.—The Secretary shall arrange for the use of the Liquefied Gaseous Fuels Spill Test Facility to carry out the provisions of this subsection.

(o) PACIFIC NORTHWEST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—

(1) ESTABLISHMENT.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the "Center") for the purpose of conducting research to aid in more effective hazardous substance response in the Pacific Northwest.

(2) PURPOSES OF CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

(3) OPERATION OF CENTER.—

(A) NONPROFIT ENTITY.—For the purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a nonprofit private entity as defined in section 201(i) of Public Law 96-517 which entity shall agree to provide the basic technical and management personnel. Such nonprofit private entity shall also agree to provide at least two permanent research facilities, one of which shall be located in Benton County, Washington, and one of which shall be located in Clallam County, Washington.

(B) AUTHORITIES.—The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Washington, Oregon, Idaho, and Montana in order to carry out the purposes of the Center.

(4) HAZARDOUS WASTE RESEARCH AT THE HANFORD SITE.—

(A) INTERAGENCY AGREEMENTS.—The Administrator and the Secretary of Energy are authorized to enter into interagency agreements with one another for the purpose of providing for research, evaluation, testing, development, and demonstration into alternative or innovative technologies to characterize and assess the nature and extent of hazardous waste (including radioactive mixed waste) contamination at the Hanford site, in the State of Washington.

(B) FUNDING.—There is authorized to be appropriated to the Secretary of Energy for purposes of carrying out this paragraph for fiscal years beginning after September 30,

1986, not more than $5,000,000. All sums appropriated under this subparagraph shall be provided to the Administrator by the Secretary of Energy, pursuant to the interagency agreement entered into under subparagraph (A), for the purpose of the Administrator entering into contracts and cooperative agreements with, and making grants to, the Center in order to carry out the research, evaluation, testing, development, and demonstration described in paragraph (1).

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator for purposes of carrying out this subsection (other than paragraph (4)) for fiscal years beginning after September 30, 1986, not more than $5,000,000.

(p) SILVER CREEK TAILINGS.—Effective with the date of enactment of this Act, the facility listed in Group 7 in EPA National Priorities List Update #4 (50 Federal Register 37956, September 18, 1985), the site in Park City, Utah, which is located on tailings from noncoal mining operations, shall be deemed removed from the list of sites recommended for inclusion on the National Priorities List, unless the President determines upon site specific data not used in the proposed listing of such facility, that the facility meets requirements of the Hazard Ranking System or any revised Hazard Ranking System.

SEC. 119. RESPONSE ACTION CONTRACTORS.

Title I of CERCLA is amended by adding the following new section after section 118:

"SEC. 119. RESPONSE ACTION CONTRACTORS.

"(a) LIABILITY OF RESPONSE ACTION CONTRACTORS.—

"(1) RESPONSE ACTION CONTRACTORS.—A person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this title or under any other Federal law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

"(2) NEGLIGENCE, ETC.—Paragraph (1) shall not apply in the case of a release that is caused by conduct of the response action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct.

"(3) EFFECT ON WARRANTIES; EMPLOYER LIABILITY.—Nothing in this subsection shall affect the liability of any person under any warranty under Federal, State, or common law. Nothing in this subsection shall affect the liability of an employer who is a response action contractor to any employee of such employer under any provision of law, including any provision of any law relating to worker's compensation.

"(4) GOVERNMENTAL EMPLOYEES.—A state employee or an employee of a political subdivision who provides services relating to response action while acting within the scope of his authority as a governmental employee shall have the same exemption

from liability (subject to the other provisions of this section) as is provided to the response action contractor under this section.

"(b) SAVINGS PROVISIONS.—

"(1) LIABILITY OF OTHER PERSONS.—The defense provided by section 107(b)(3) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a response action contractor. Except as provided in subsection (a)(4) and the preceding sentence, nothing in this section shall affect the liability under this Act or under any other Federal or State law of any person, other than a response action contractor.

"(2) BURDEN OF PLAINTIFF.—Nothing in this section shall affect the plaintiff's burden of establishing liability under this title.

"(c) INDEMNIFICATION.—

"(1) IN GENERAL.—The President may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) for negligence arising out of the contractor's performance in carrying out response action activities under this title, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct.

"(2) APPLICABILITY.—This subsection shall apply only with respect to a response action carried out under written agreement with—

"(A) the President;

"(B) any Federal agency;

"(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this title; or

"(D) any potentially responsible party carrying out any agreement under section 122 (relating to settlements) or section 106 (relating to abatement).

"(3) SOURCE OF FUNDING.—This subsection shall not be subject to section 1301 or 1341 of title 31 of the United States Code or section 3732 of the Revised Statutes (41 U.S.C. 11) or to section 3 of the Superfund Amendments and Reauthorization Act of 1986. For purposes of section 111, amounts expended pursuant to this subsection for indemnification of any response action contractor (except with respect to federally owned or operated facilities) shall be considered governmental response costs incurred pursuant to section 104. If sufficient funds are unavailable in the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 to make payments pursuant to such indemnification or if the Fund is repealed, there are authorized to be appropriated such amounts as may be necessary to make such payments.

"(4) REQUIREMENTS.—An indemnification agreement may be provided under this subsection only if the President determines that each of the following requirements are met:

"(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the

contractor enters into the contract to provide response action, and adequate insurance to cover such liability is not generally available at the time the response action contract is entered into.

"(B) The response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover such liability.

"(C) In the case of a response action contract covering more than one facility, the response action contractor agrees to continue to make such diligent efforts each time the contractor begins work under the contract at a new facility.

"(5) LIMITATIONS.—

"(A) LIABILITY COVERED.—Indemnification under this subsection shall apply only to response action contractor liability which results from a release of any hazardous substance or pollutant or contaminant if such release arises out of response action activities.

"(B) DEDUCTIBLES AND LIMITS.—An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

"(C) CONTRACTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

"(i) DECISION TO INDEMNIFY.—In deciding whether to enter into an indemnification agreement with a response action contractor carrying out a written contract or agreement with any potentially responsible party, the President shall determine an amount which the potentially responsible party is able to indemnify the contractor. The President may enter into such an indemnification agreement only if the President determines that such amount of indemnification is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. The President shall make the determinations in the preceding sentences (with respect to the amount and the adequacy of the amount) taking into account the total net assets and resources of potentially responsible parties with respect to the facility at the time of such determinations.

"(ii) CONDITIONS.—The President may pay a claim under an indemnification agreement referred to in clause (i) for the amount determined under clause (i) only if the contractor has exhausted all administrative, judicial, and common law claims for indemnification against all potentially responsible parties participating in the clean-up of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. Such indemnification agreement shall require such contractor to pay any deductible established under subparagraph (B) before the contractor may re-

cover any amount from the potentially responsible party or under the indemnification agreement.

"(D) RCRA FACILITIES.—No owner or operator of a facility regulated under the Solid Waste Disposal Act may be indemnified under this subsection with respect to such facility.

"(E) PERSONS RETAINED OR HIRED.—A person retained or hired by a person described in subsection (e)(2)(B) shall be eligible for indemnification under this subsection only if the President specifically approves of the retaining or hiring of such person.

"(6) COST RECOVERY.—For purposes of section 107, amounts expended pursuant to this subsection for indemnification of any person who is a response action contractor with respect to any release or threatened release shall be considered a cost of response incurred by the United States Government with respect to such release.

"(7) REGULATIONS.—The President shall promulgate regulations for carrying out the provisions of this subsection. Before promulgation of the regulations, the President shall develop guidelines to carry out this section. Development of such guidelines shall include reasonable opportunity for public comment.

"(8) STUDY.—The Comptroller General shall conduct a study in the fiscal year ending September 30, 1989, on the application of this subsection, including whether indemnification agreements under this subsection are being used, the number of claims that have been filed under such agreements, and the need for this subsection. The Comptroller General shall report the findings of the study to Congress no later than September 30, 1989.

"(d) EXCEPTION.—The exemption provided under subsection (a) and the authority of the President to offer indemnification under subsection (c) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 107(a) with respect to the release or threatened release concerned if such person would be covered by such provisions even if such person had not carried out any actions referred to in subsection (e) of this section.

"(e) DEFINITIONS.—For purposes of this section—

"(1) RESPONSE ACTION CONTRACT.—The term 'response action contract' means any written contract or agreement entered into by a response action contractor (as defined in paragraph (2)(A) of this subsection) with—

"(A) the President;

"(B) any Federal agency;

"(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this Act; or

"(D) any potentially responsible party carrying out an agreement under section 106 or 122;

to provide any remedial action under this Act at a facility listed on the National Priorities List, or any removal under this Act, with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from the facility

or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such facility.

"(2) RESPONSE ACTION CONTRACTOR.—The term 'response action contractor' means—

"(A) any—

"(i) person who enters into a response action contract with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility and is carrying out such contract; and

"(ii) person, public or nonprofit private entity, conducting a field demonstration pursuant to section 311(b); and

"(B) any person who is retained or hired by a person described in subparagraph (A) to provide any services relating to a response action.

"(3) INSURANCE.—The term 'insurance' means liability insurance which is fair and reasonably priced, as determined by the President, and which is made available at the time the contractor enters into the response action contract to provide response action.

"(f) COMPETITION.—Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping, and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949. The Federal selection procedures shall apply to appropriate contracts negotiated by all Federal governmental agencies involved in carrying out this Act. Such procedures shall be followed by response action contractors and subcontractors.".

SEC. 120. FEDERAL FACILITIES.

(a) IN GENERAL.—Title I of CERCLA is amended by adding the following new section after section 119:

"SEC. 120. FEDERAL FACILITIES.

"(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT.—

"(1) IN GENERAL.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act. Nothing in this section shall be construed to affect the liability of any person or entity under sections 106 and 107.

"(2) APPLICATION OF REQUIREMENTS TO FEDERAL FACILITIES.—All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regu-

lations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

"(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

"(4) STATE LAWS.—State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

"(b) NOTICE.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of such Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

"(c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket (hereinafter in this section referred to as the 'docket') which shall contain each of the following:

"(1) All information submitted under section 3016 of the Solid Waste Disposal Act and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this Act with respect to the facility.

"(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act.

"(3) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional

office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

"(d) ASSESSMENT AND EVALUATION.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket. Following such preliminary assessment, the Administrator shall, where appropriate—

"(1) evaluate such facilities in accordance with the criteria established in accordance with section 105 under the National Contingency Plan for determining priorities among releases; and

"(2) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria. Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons. Evaluation and listing under this subsection shall be completed not later than 30 months after such date of enactment. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket.

"(e) REQUIRED ACTION BY DEPARTMENT.—

"(1) RI/FS.—Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before the date of the enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after such date of enactment. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

"(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT.—The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 117.

"(3) COMPLETION OF REMEDIAL ACTIONS.—Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

"(4) CONTENTS OF AGREEMENT.—Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

"(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

"(B) A schedule for the completion of each such remedial action.

"(C) Arrangements for long-term operation and maintenance of the facility.

"(5) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

"(A) A report on the progress in reaching interagency agreements under this section.

"(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

"(C) A brief summary of the public comments regarding each proposed interagency agreement.

"(D) A description of the instances in which no agreement was reached.

"(E) A report on progress in conducting investigations and studies under paragraph (1).

"(F) A report on progress in conducting remedial actions.

"(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete re-

sponse action. Such reports shall also be submitted to the affected States.

"(6) SETTLEMENTS WITH OTHER PARTIES.—If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 122 (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 106 of this Act.

"(f) STATE AND LOCAL PARTICIPATION.—The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 121.

"(g) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

"(h) PROPERTY TRANSFERRED BY FEDERAL AGENCIES.—

"(1) NOTICE.—After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

"(2) FORM OF NOTICE; REGULATIONS.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the enactment of this subsection but not later than 18 months after the date of such enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

"(3) CONTENTS OF CERTAIN DEEDS.—After the last day of the 6-month period beginning on the effective date of regulations

under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

"(A) to the extent such information is available on the basis of a complete search of agency files—

"(i) a notice of the type and quantity of such hazardous substances,

"(ii) notice of the time at which such storage, release, or disposal took place, and

"(iii) a description of the remedial action taken, if any, and

"(B) a covenant warranting that—

"(i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

"(ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property.

"(i) OBLIGATIONS UNDER SOLID WASTE DISPOSAL ACT.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).

"(j) NATIONAL SECURITY.—

"(1) SITE SPECIFIC PRESIDENTIAL ORDERS.—The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this title or under title III of the Superfund Amendments and Reauthorization Act of 1986 with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed one year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response

action with respect to which an exemption has been issued under this paragraph. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

"(2) CLASSIFIED INFORMATION.—Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all Executive orders concerning the handling of restricted data and national security information, including 'need to know' requirements, shall be applicable to any grant of access to classified information under the provisions of this Act or under title III of the Superfund Amendments and Reauthorization Act of 1986.".

(b) LIMITED GRANDFATHER.—Section 120 of CERCLA shall not apply to any response action or remedial action for which a plan is under development by the Department of Energy on the date of enactment of this Act with respect to facilities—

(1) owned or operated by the United States and subject to the jurisdiction of such Department;

(2) located in St. Charles and St. Louis counties, Missouri, or the city of St. Louis, Missouri, and

(3) published in the National Priorities List.

In preparing such plans, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency.

SEC. 121. CLEANUP STANDARDS.

(a) AMENDMENT OF CERCLA.—Title I of CERCLA is amended by adding the following new section after section 120:

"SEC. 121. CLEANUP STANDARDS.

"(a) SELECTION OF REMEDIAL ACTION.—The President shall select appropriate remedial actions determined to be necessary to be carried out under section 104 or secured under section 106 which are in accordance with this section and, to the extent practicable, the national contingency plan, and which provide for cost-effective response. In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

"(b) GENERAL RULES.—(1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of

various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:

"(A) the long-term uncertainties associated with land disposal;

"(B) the goals, objectives, and requirements of the Solid Waste Disposal Act;

"(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

"(D) short- and long-term potential for adverse health effects from human exposure;

"(E) long-term maintenance costs;

"(F) the potential for future remedial action costs if the alternative remedial action in question were to fail; and

"(G) the potential threat to human health and the environment associated with excavation, transportation, and redisposal, or containment.

The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. If the President selects a remedial action not appropriate for a preference under this subsection, the President shall publish an explanation as to why a remedial action involving such reductions was not selected.

"(2) The President may select an alternative remedial action meeting the objectives of this subsection whether or not such action has been achieved in practice at any other facility or site that has similar characteristics. In making such a selection, the President may take into account the degree of support for such remedial action by parties interested in such site.

"(c) REVIEW.—If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each 5 years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. In addition, if upon such review it is the judgment of the President that action is appropriate at such site in accordance with section 104 or 106, the President shall take or require such action. The President shall report to the Congress a list of facilities for which such review is required, the results of all such reviews, and any actions taken as a result of such reviews.

"(d) DEGREE OF CLEANUP.—(1) Remedial actions selected under this section or otherwise required or agreed to by the President under this Act shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants released into the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

"(2)(A) With respect to any hazardous substance, pollutant or contaminant that will remain onsite, if—

"(i) any standard, requirement, criteria, or limitation under any Federal environmental law, including, but not limited to, the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, the Marine Protection, Research and Sanctuaries Act, or the Solid Waste Disposal Act, or

"(ii) any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation, including each such State standard, requirement, criteria, or limitation contained in a program approved, authorized or delegated by the Administrator under a statute cited in subparagraph (A), and that has been identified to the President by the State in a timely manner,

is legally applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 104 or secured under section 106 shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable or relevant and appropriate standard, requirement, criteria, or limitation. Such remedial action shall require a level or standard of control which at least attains Maximum Contaminant Level Goals established under the Safe Drinking Water Act and water quality criteria established under section 304 or 303 of the Clean Water Act, where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release.

"(B)(i) In determining whether or not any water quality criteria under the Clean Water Act is relevant and appropriate under the circumstances of the release or threatened release, the President shall consider the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which such criteria were developed, and the latest information available.

"(ii) For the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where—

"(I) there are known and projected points of entry of such groundwater into surface water; and

"(II) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and

"(III) the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of such groundwater into surface water

then the assumed point of human exposure may be at such known and projected points of entry.

"(C)(i) Clause (ii) of this subparagraph shall be applicable only in cases where, due to the President's selection, in compliance with subsection (b)(1), of a proposed remedial action which does not permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances, pollutants, or contaminants, the proposed disposition of waste generated by or associated with the remedial action selected by the President is land disposal in a State referred to in clause (ii).

"(ii) Except as provided in clauses (iii) and (iv), a State standard, requirement, criteria, or limitation (including any State siting standard or requirement) which could effectively result in the statewide prohibition of land disposal of hazardous substances, pollutants, or contaminants shall not apply.

"(iii) Any State standard, requirement, criteria, or limitation referred to in clause (ii) shall apply where each of the following conditions is met:

"(I) The State standard, requirement, criteria, or limitation is of general applicability and was adopted by formal means.

"(II) The State standard, requirement, criteria, or limitation was adopted on the basis of hydrologic, geologic, or other relevant considerations and was not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment.

"(III) The State arranges for, and assures payment of the incremental costs of utilizing, a facility for disposition of the hazardous substances, pollutants, or contaminants concerned.

"(iv) Where the remedial action selected by the President does not conform to a State standard and the State has initiated a law suit against the Environmental Protection Agency prior to May 1, 1986, to seek to have the remedial action conform to such standard, the President shall conform the remedial action to the State standard. The State shall assure the availability of an offsite facility for such remedial action.

"(3) In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with section 3004 and 3005 of the Solid Waste Disposal Act (or, where applicable, in compliance with the Toxic Substances Control Act or other applicable Federal law) and all applicable State requirements. Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the President determines that both of the following requirements are met:

"(A) The unit to which the hazardous substance or pollutant or contaminant is transferred is not releasing any hazardous waste, or constituent thereof, into the groundwater or surface water or soil.

"(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act.

The President shall notify the owner or operator of such facility of determinations under this paragraph.

"(4) The President may select a remedial action meeting the requirements of paragraph (1) that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation as required by paragraph (2) (including subparagraph (B) thereof), if the President finds that—

"(A) the remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed;

"(B) compliance with such requirement at that facility will result in greater risk to human health and the environment than alternative options;

"(C) compliance with such requirements is technically impracticable from an engineering perspective;

"(D) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach;

"(E) with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State; or

"(F) in the case of a remedial action to be undertaken solely under section 104 using the Fund, selection of a remedial action that attains such level or standard of control will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.

The President shall publish such findings, together with an explanation and appropriate documentation.

"(e) PERMITS AND ENFORCEMENT.—(1) No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section.

"(2) A State may enforce any Federal or State standard, requirement, criteria, or limitation to which the remedial action is required to conform under this Act in the United States district court for the district in which the facility is located. Any consent decree shall require the parties to attempt expeditiously to resolve disagreements concerning implementation of the remedial action informally with the appropriate Federal and State agencies. Where the parties agree, the consent decree may provide for administrative enforcement. Each consent decree shall also contain stipulated penalties for violations of the decree in an amount not to exceed $25,000 per day, which may be enforced by either the President or the State. Such stipulated penalties shall not be construed to impair or affect the authority of the court to order compliance with the specific terms of any such decree.

"(f) STATE INVOLVEMENT.—(1) The President shall promulgate regulations providing for substantial and meaningful involvement by each State in initiation, development, and selection of remedial actions to be undertaken in that State. The regulations, at a minimum, shall include each of the following:

"(A) State involvement in decisions whether to perform a preliminary assessment and site inspection.

"(B) Allocation of responsibility for hazard ranking system scoring.

"(C) State concurrence in deleting sites from the National Priorities List.

"(D) State participation in the long-term planning process for all remedial sites within the State.

"(E) A reasonable opportunity for States to review and comment on each of the following:

"(i) The remedial investigation and feasibility study and all data and technical documents leading to its issuance.

"(ii) The planned remedial action identified in the remedial investigation and feasibility study.

"(iii) The engineering design following selection of the final remedial action.

"(iv) Other technical data and reports relating to implementation of the remedy.

"(v) Any proposed finding or decision by the President to exercise the authority of subsection (d)(4).

"(F) Notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State and an opportunity to participate in such negotiations and, subject to paragraph (2), be a party to any settlement.

"(G) Notice to the State and an opportunity to comment on the President's proposed plan for remedial action as well as on alternative plans under consideration. The President's proposed decision regarding the selection of remedial action shall be accompanied by a response to the comments submitted by the State, including an explanation regarding any decision under subsection (d)(4) on compliance with promulgated State standards. A copy of such response shall also be provided to the State.

"(H) Prompt notice and explanation of each proposed action to the State in which the facility is located.

Prior to the promulgation of such regulations, the President shall provide notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State, and such State may participate in such negotiations and, subject to paragraph (2), any settlements.

"(2)(A) This paragraph shall apply to remedial actions secured under section 106. At least 30 days prior to the entering of any consent decree, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4), the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, the State may become a signatory to the consent decree.

"(B) If the State does not concur in such selection, and the State desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State shall intervene in the action under section 106 before entry of the consent decree, to seek to have the remedial action so conform. Such intervention shall be a matter of right. The remedial action shall conform to such standard, requirement, criteria, or limitation if the State establishes, on the administrative record, that the finding of the President was not supported by substantial evidence. If the court determines that the remedial action shall conform to such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State may become a signatory to the decree. If the court determines that the remedial action need not conform to such standard, requirement, criteria, or limitation, and the State pays or assures the payment of the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State shall become a signatory to the decree.

"(C) The President may conclude settlement negotiations with potentially responsible parties without State concurrence.

"(3)(A) This paragraph shall apply to remedial actions at facilities owned or operated by a department, agency, or instrumentality of the United States. At least 30 days prior to the publication of the President's final remedial action plan, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4), the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, or does not act within 30 days, the remedial action may proceed.

"(B) If the State does not concur in such selection as provided in subparagraph (A), and desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State may maintain an action as follows:

> *"(i) If the President has notified the State of selection of such a remedial action, the State may bring an action within 30 days of such notification for the sole purpose of determining whether the finding of the President is supported by substantial evidence. Such action shall be brought in the United States district court for the district in which the facility is located.*
>
> *"(ii) If the State establishes, on the administrative record, that the President's finding is not supported by substantial evidence, the remedial action shall be modified to conform to such standard, requirement, criteria, or limitation.*
>
> *"(iii) If the State fails to establish that the President's finding was not supported by substantial evidence and if the State pays, within 60 days of judgment, the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be selected to meet such standard, requirement, criteria, or limitation. If the State fails to pay within 60 days, the remedial action selected by the President shall proceed through completion.*

"(C) Nothing in this section precludes, and the court shall not enjoin, the Federal agency from taking any remedial action unrelat-

tion 106, following approval of the agreement by the Attorney General, except as otherwise provided in the case of certain administrative settlements referred to in subsection (g), the agreement shall be entered in the appropriate United States district court as a consent decree. The President need not make any finding regarding an imminent and substantial endangerment to the public health or the environment in connection with any such agreement or consent decree.

"(B) EFFECT.—The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Except as otherwise provided in the Federal Rules of Evidence, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

"(C) STRUCTURE.—The President may fashion a consent decree so that the entering of such decree and compliance with such decree or with any determination or agreement made pursuant to this section shall not be considered an admission of liability for any purpose.

"(2) PUBLIC PARTICIPATION.—

"(A) FILING OF PROPOSED JUDGMENT.—At least 30 days before a final judgment is entered under paragraph (1), the proposed judgment shall be filed with the court.

"(B) OPPORTUNITY FOR COMMENT.—The Attorney General shall provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. The Attorney General shall consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate.

"(3) 104(b) AGREEMENTS.—Whenever the President enters into an agreement under this section with any potentially responsible party with respect to action under section 104(b), the President shall issue an order or enter into a decree setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order or decree.

"(e) SPECIAL NOTICE PROCEDURES.—

"(1) NOTICE.—Whenever the President determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible parties for taking response action (including any action described in section 104(b)) and would expedite remedial action, the President shall so notify all such parties and shall provide them with information concerning each of the following:

"(A) The names and addresses of potentially responsible parties (including owners and operators and other persons referred to in section 107(a)), to the extent such information is available.

"(B) To the extent such information is available, the volume and nature of substances contributed by each potentially responsible party identified at the facility.

"(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The President shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the President. The provisions of subsection (e) of section 104 regarding protection of confidential information apply to information provided under this paragraph. Disclosure of information generated by the President under this section to persons other than the Congress, or any duly authorized Committee thereof, is subject to other privileges or protections provided by law, including (but not limited to) those applicable to attorney work product. Nothing contained in this paragraph or in other provisions of this Act shall be construed, interpreted, or applied to diminish the required disclosure of information under other provisions of this or other Federal or State laws.

"(2) NEGOTIATION.—

"(A) MORATORIUM.—Except as provided in this subsection, the President may not commence action under section 104(a) or take any action under section 106 for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the President may not commence a remedial investigation and feasibility study under section 104(b) for 90 days after providing notice and information under this subsection with respect to such action. The President may commence any additional studies or investigations authorized under section 104(b), including remedial design, during the negotiation period.

"(B) PROPOSALS.—Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 106 shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 106. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 104(b) shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 104(b).

"(C) ADDITIONAL PARTIES.—If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the President may bring the additional party into the negotiation or enter into a separate agreement with such party.

"(3) PRELIMINARY ALLOCATION OF RESPONSIBILITY.—

ed to or not inconsistent with such standard, requirement, criteria, or limitation.".

(b) EFFECTIVE DATE.—With respect to section 121 of CERCLA, as added by this section—

(1) The requirements of section 121 of CERCLA shall not apply to any remedial action for which the Record of Decision (hereinafter in this section referred to as the "ROD") was signed, or the consent decree was lodged, before date of enactment.

(2) If the ROD was signed, or the consent decree lodged, within the 30-day period immediately following enactment of the Act, the Administrator shall certify in writing that the portion of the remedial action covered by the ROD or consent decree complies to the maximum extent practicable with section 121 of CERCLA.

Any ROD signed before enactment of this Act and reopened after enactment of this Act to modify or supplement the selection of remedy shall be subject to the requirements of section 121 of CERCLA.

SEC. 122. SETTLEMENTS.

(a) NEW SECTION.—Title I of CERCLA is amended by adding the following new section after section 121:

"SEC. 122. SETTLEMENTS.

"(a) AUTHORITY TO ENTER INTO AGREEMENTS.—The President, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any response action (including any action described in section 104(b)) if the President determines that such action will be done properly by such person. Whenever practicable and in the public interest, as determined by the President, the President shall act to facilitate agreements under this section that are in the public interest and consistent with the National Contingency Plan in order to expedite effective remedial actions and minimize litigation. If the President decides not to use the procedures in this section, the President shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate. A decision of the President to use or not to use the procedures in this section is not subject to judicial review.

"(b) AGREEMENTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

"(1) MIXED FUNDING.—An agreement under this section may provide that the President will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the President has agreed to finance. In any case in which the President provides such reimbursement, the President shall make all reasonable efforts to recover the amount of such reimbursement under section 107 or under other relevant authorities.

"(2) REVIEWABILITY.—The President's decisions regarding the availability of fund financing under this subsection shall not be subject to judicial review under subsection (d).

"(3) RETENTION OF FUNDS.—If, as part of any agreement, the President will be carrying out any action and the parties will be paying amounts to the President, the President may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

"(4) FUTURE OBLIGATION OF FUND.—In the case of a completed remedial action pursuant to an agreement described in paragraph (1), the Fund shall be subject to an obligation for subsequent remedial actions at the same facility but only to the extent that such subsequent actions are necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the Fund for the original remedial action. The Fund's obligation for such future remedial action may be met through Fund expenditures or through payment, following settlement or enforcement action, by parties who were not signatories to the original agreement.

"(c) EFFECT OF AGREEMENT.—

"(1) LIABILITY.—Whenever the President has entered into an agreement under this section, the liability to the United States under this Act of each party to the agreement, including any future liability to the United States, arising from the release or threatened release that is the subject of the agreement shall be limited as provided in the agreement pursuant to a covenant not to sue in accordance with subsection (f). A covenant not to sue may provide that future liability to the United States of a settling potentially responsible party under the agreement may be limited to the same proportion as that established in the original settlement agreement. Nothing in this section shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) any covenant not to sue contained in an agreement under this section. In determining the extent to which the liability of parties to an agreement shall be limited pursuant to a covenant not to sue, the President shall be guided by the principle that a more complete covenant not to sue shall be provided for a more permanent remedy undertaken by such parties.

"(2) ACTIONS AGAINST OTHER PERSONS.—If an agreement has been entered into under this section, the President may take any action under section 106 against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) has expired. Nothing in this section shall be construed to affect either of the following:

"(A) The liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement.

"(B) The authority of the President to maintain an action under this Act against any person who is not a party to the agreement.

"(d) ENFORCEMENT.—

"(1) CLEANUP AGREEMENTS.—

"(A) CONSENT DECREE.—Whenever the President enters into an agreement under this section with any potentially responsible party with respect to remedial action under sec-

tion 106, following approval of the agreement by the Attorney General, except as otherwise provided in the case of certain administrative settlements referred to in subsection (g), the agreement shall be entered in the appropriate United States district court as a consent decree. The President need not make any finding regarding an imminent and substantial endangerment to the public health or the environment in connection with any such agreement or consent decree.

"(B) EFFECT.—The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Except as otherwise provided in the Federal Rules of Evidence, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

"(C) STRUCTURE.—The President may fashion a consent decree so that the entering of such decree and compliance with such decree or with any determination or agreement made pursuant to this section shall not be considered an admission of liability for any purpose.

"(2) PUBLIC PARTICIPATION.—

"(A) FILING OF PROPOSED JUDGMENT.—At least 30 days before a final judgment is entered under paragraph (1), the proposed judgment shall be filed with the court.

"(B) OPPORTUNITY FOR COMMENT.—The Attorney General shall provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. The Attorney General shall consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate.

"(3) 104(b) AGREEMENTS.—Whenever the President enters into an agreement under this section with any potentially responsible party with respect to action under section 104(b), the President shall issue an order or enter into a decree setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order or decree.

"(e) SPECIAL NOTICE PROCEDURES.—

"(1) NOTICE.—Whenever the President determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible parties for taking response action (including any action described in section 104(b)) and would expedite remedial action, the President shall so notify all such parties and shall provide them with information concerning each of the following:

"(A) The names and addresses of potentially responsible parties (including owners and operators and other persons referred to in section 107(a)), to the extent such information is available.

"(B) To the extent such information is available, the volume and nature of substances contributed by each potentially responsible party identified at the facility.

"(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The President shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the President. The provisions of subsection (e) of section 104 regarding protection of confidential information apply to information provided under this paragraph. Disclosure of information generated by the President under this section to persons other than the Congress, or any duly authorized Committee thereof, is subject to other privileges or protections provided by law, including (but not limited to) those applicable to attorney work product. Nothing contained in this paragraph or in other provisions of this Act shall be construed, interpreted, or applied to diminish the required disclosure of information under other provisions of this or other Federal or State laws.

"(2) NEGOTIATION.—

"(A) MORATORIUM.—Except as provided in this subsection, the President may not commence action under section 104(a) or take any action under section 106 for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the President may not commence a remedial investigation and feasibility study under section 104(b) for 90 days after providing notice and information under this subsection with respect to such action. The President may commence any additional studies or investigations authorized under section 104(b), including remedial design, during the negotiation period.

"(B) PROPOSALS.—Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 106 shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 106. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 104(b) shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 104(b).

"(C) ADDITIONAL PARTIES.—If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the President may bring the additional party into the negotiation or enter into a separate agreement with such party.

"(3) PRELIMINARY ALLOCATION OF RESPONSIBILITY.—

"(A) IN GENERAL.—The President shall develop guidelines for preparing nonbinding preliminary allocations of responsibility. In developing these guidelines the President may include such factors as the President considers relevant, such as: volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors. When it would expedite settlements under this section and remedial action, the President may, after completion of the remedial investigation and feasibility study, provide a nonbinding preliminary allocation of responsibility which allocates percentages of the total cost of response among potentially responsible parties at the facility.

"(B) COLLECTION OF INFORMATION.—To collect information necessary or appropriate for performing the allocation under subparagraph (A) or for otherwise implementing this section, the President may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the President deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

"(C) EFFECT.—The nonbinding preliminary allocation of responsibility shall not be admissible as evidence in any proceeding, and no court shall have jurisdiction to review the nonbinding preliminary allocation of responsibility. The nonbinding preliminary allocation of responsibility shall not constitute an apportionment or other statement on the divisibility of harm or causation.

"(D) COSTS.—The costs incurred by the President in producing the nonbinding preliminary allocation of responsibility shall be reimbursed by the potentially responsible parties whose offer is accepted by the President. Where an offer under this section is not accepted, such costs shall be considered costs of response.

"(E) DECISION TO REJECT OFFER.—Where the President, in his discretion, has provided a nonbinding preliminary allocation of responsibility and the potentially responsible parties have made a substantial offer providing for response to the President which he rejects, the reasons for the rejection shall be provided in a written explanation. The President's decision to reject such an offer shall not be subject to judicial review.

"(4) FAILURE TO PROPOSE.—If the President determines that a good faith proposal for undertaking or financing action under section 106 has not been submitted within 60 days of the provision of notice pursuant to this subsection, the President may thereafter commence action under section 104(a) or take an

action against any person under section 106 of this Act. If the President determines that a good faith proposal for undertaking or financing action under section 104(b) has not been submitted within 60 days after the provision of notice pursuant to this subsection, the President may thereafter commence action under section 104(b).

"(5) SIGNIFICANT THREATS.—Nothing in this subsection shall limit the President's authority to undertake response or enforcement action regarding a significant threat to public health or the environment within the negotiation period established by this subsection.

"(6) INCONSISTENT RESPONSE ACTION.—When either the President, or a potentially responsible party pursuant to an administrative order or consent decree under this Act, has initiated a remedial investigation and feasibility study for a particular facility under this Act, no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized by the President.

"(f) COVENANT NOT TO SUE.—

"(1) DISCRETIONARY COVENANTS.—The President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this Act, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions is met:

"(A) The covenant not to sue is in the public interest.

"(B) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act.

"(C) The person is in full compliance with a consent decree under section 106 (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

"(D) The response action has been approved by the President.

"(2) SPECIAL COVENANTS NOT TO SUE.—In the case of any person to whom the President is authorized under paragraph (1) of this subsection to provide a covenant not to sue, for the portion of remedial action—

"(A) which involves the transport and secure disposition offsite of hazardous substances in a facility meeting the requirements of sections 3004 (c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 3005(c) of the Solid Waste Disposal Act, where the President has rejected a proposed remedial action that is consistent with the National Contingency Plan that does not include such offsite disposition and has thereafter required offsite disposition; or

"(B) which involves the treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of such substances, such that, in the judgment of the President, the substances no longer present any current or currently foreseeable future significant risk to public health, welfare or the environ-

ment, no byproduct of the treatment or destruction process presents any significant hazard to public health, welfare or the environment, and all byproducts are themselves treated, destroyed, or contained in a manner which assures that such byproducts do not present any current or currently foreseeable future significant risk to public health, welfare or the environment,

the President shall provide such person with a covenant not to sue with respect to future liability to the United States under this Act for a future release or threatened release of hazardous substances from such facility, and a person provided such covenant not to sue shall not be liable to the United States under section 106 or 107 with respect to such release or threatened release at a future time.

"(3) REQUIREMENT THAT REMEDIAL ACTION BE COMPLETED.—A covenant not to sue concerning future liability to the United States shall not take effect until the President certifies that remedial action has been completed in accordance with the requirements of this Act at the facility that is the subject of such covenant.

"(4) FACTORS.—In assessing the appropriateness of a covenant not to sue under paragraph (1) and any condition to be included in a covenant not to sue under paragraph (1) or (2), the President shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

"(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

"(B) The nature of the risks remaining at the facility.

"(C) The extent to which performance standards are included in the order or decree.

"(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

"(E) The extent to which the technology used in the response action is demonstrated to be effective.

"(F) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

"(G) Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

"(5) SATISFACTORY PERFORMANCE.—Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

"(6) ADDITIONAL CONDITION FOR FUTURE LIABILITY.—(A) Except for the portion of the remedial action which is subject to a covenant not to sue under paragraph (2) or under subsection (g) (relating to de minimis settlements), a covenant not to sue a person concerning future liability to the United States shall include an exception to the covenant that allows the President to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant

where such liability arises out of conditions which are unknown at the time the President certifies under paragraph (3) that remedial action has been completed at the facility concerned.

"(B) In extraordinary circumstances, the President may determine, after assessment of relevant factors such as those referred to in paragraph (4) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception referred to in subparagraph (A) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the facility.

"(C) The President is authorized to include any provisions allowing future enforcement action under section 106 or 107 that in the discretion of the President are necessary and appropriate to assure protection of public health, welfare, and the environment.

"(g) DE MINIMIS SETTLEMENTS.—

"(1) EXPEDITED FINAL SETTLEMENT.—Whenever practicable and in the public interest, as determined by the President, the President shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 106 or 107 if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the President, the conditions in either of the following subparagraph (A) or (B) are met:

"(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

"(i) The amount of the hazardous substances contributed by that party to the facility.

"(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

"(B) The potentially responsible party—

"(i) is the owner of the real property on or in which the facility is located;

"(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

"(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph (B) does not apply if the potentially respons ible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

"(2) COVENANT NOT TO SUE.—The President may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (f).

"(3) EXPEDITED AGREEMENT.—The President shall reach any such settlement or grant any such covenant not to sue as soon as possible after the President has available the information necessary to reach such a settlement or grant such a covenant.

"(4) CONSENT DECREE OR ADMINISTRATIVE ORDER.—A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. In the case of any facility where the total response costs exceed $500,000 (excluding interest), if the settlement is embodied as an administrative order, the order may be issued only with the prior written approval of the Attorney General. If the Attorney General or his designee has not approved or disapproved the order within 30 days of this referral, the order shall be deemed to be approved unless the Attorney General and the Administrator have agreed to extend the time. The district court for the district in which the release or threatened release occurs may enforce any such administrative order.

"(5) EFFECT OF AGREEMENT.—A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

"(6) SETTLEMENTS WITH OTHER POTENTIALLY RESPONSIBLE PARTIES.—Nothing in this subsection shall be construed to affect the authority of the President to reach settlements with other potentially responsible parties under this Act.

"(h) COST RECOVERY SETTLEMENT AUTHORITY.—

"(1) AUTHORITY TO SETTLE.—The head of any department or agency with authority to undertake a response action under this Act pursuant to the national contingency plan may consider, compromise, and settle a claim under section 107 for costs incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. In the case of any facility where the total response costs exceed $500,000 (excluding interest), any claim referred to in the preceding sentence may be compromised and settled only with the prior written approval of the Attorney General.

"(2) USE OF ARBITRATION.—Arbitration in accordance with regulations promulgated under this subsection may be used as a method of settling claims of the United States where the total response costs for the facility concerned do not exceed $500,000 (excluding interest). After consultation with the Attorney General, the department or agency head may establish and publish regulations for the use of arbitration or settlement under this subsection.

"(3) RECOVERY OF CLAIMS.—If any person fails to pay a claim that has been settled under this subsection, the department or agency head shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount of such claim, plus costs, attorneys' fees, and interest from the date of the settlement. In such an action, the terms of the settlement shall not be subject to review.

"(4) CLAIMS FOR CONTRIBUTION.—A person who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement shall not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

"(i) SETTLEMENT PROCEDURES.—

"(1) PUBLICATION IN FEDERAL REGISTER.—At least 30 days before any settlement (including any settlement arrived at through arbitration) may become final under subsection (h), or under subsection (g) in the case of a settlement embodied in an administrative order, the head of the department or agency which has jurisdiction over the proposed settlement shall publish in the Federal Register notice of the proposed settlement. The notice shall identify the facility concerned and the parties to the proposed settlement.

"(2) COMMENT PERIOD.—For a 30-day period beginning on the date of publication of notice under paragraph (1) of a proposed settlement, the head of the department or agency which has jurisdiction over the proposed settlement shall provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement.

"(3) CONSIDERATION OF COMMENTS.—The head of the department or agency shall consider any comments filed under paragraph (2) in determining whether or not to consent to the proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

"(j) NATURAL RESOURCES.—

"(1) NOTIFICATION OF TRUSTEE.—Where a release or threatened release of any hazardous substance that is the subject of negotiations under this section may have resulted in damages to natural resources under the trusteeship of the United States, the President shall notify the Federal natural resource trustee of the negotiations and shall encourage the participation of such trustee in the negotiations.

"(2) COVENANT NOT TO SUE.—An agreement under this section may contain a covenant not to sue under section 107(a)(4)(C) for damages to natural resources under the trusteeship of the United States resulting from the release or threatened release of hazardous substances that is the subject of the agreement, but only if the Federal natural resource trustee has agreed in writing to such covenant. The Federal natural resource trustee may agree to such covenant if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural resources damaged by such release or threatened release of hazardous substances.

"(k) SECTION NOT APPLICABLE TO VESSELS.—The provisions of this section shall not apply to releases from a vessel.

"(l) CIVIL PENALTIES.—A potentially responsible party which is a party to an administrative order or consent decree entered pursuant to an agreement under this section or section 120 (relating to Feder-

al facilities) or which is a party to an agreement under section 120 and which fails or refuses to comply with any term or condition of the order, decree or agreement shall be subject to a civil penalty in accordance with section 109.

"(m) APPLICABILITY OF GENERAL PRINCIPLES OF LAW.—In the case of consent decrees and other settlements under this section (including covenants not to sue), no provision of this Act shall be construed to preclude or otherwise affect the applicability of general principles of law regarding the setting aside or modification of consent decrees or other settlements.".

(b) CONTRIBUTION.—Section 308 of CERCLA is amended by adding the following at the end thereof: "If an administrative settlement under section 122 has the effect of limiting any person's right to obtain contribution from any party to such settlement, and if the effect of such limitation would constitute a taking without just compensation in violation of the fifth amendment of the Constitution of the United States, such person shall not be entitled, under other laws of the United States, to recover compensation from the United States for such taking, but in any such case, such limitation on the right to obtain contribution shall be treated as having no force and effect.".

SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

(a) Title I of CERCLA is amended by adding the following after section 122:

"SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

"(a) APPLICATION.—Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section.

"(b) REIMBURSEMENT.—

"(1) TEMPORARY EMERGENCY MEASURES.—The President is authorized to reimburse local community authorities for expenses incurred (before or after the enactment of the Superfund Amendments and Reauthorization Act of 1986) in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

"(2) LOCAL FUNDS NOT SUPPLANTED.—Reimbursement under this section shall not supplant local funds normally provided for response.

"(c) AMOUNT.—The amount of any reimbursement to any local authority under subsection (b)(1) may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.

"(d) PROCEDURE.—Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Ad-

ministrator within one year after the enactment of the Superfund Amendments and Reauthorization Act of 1986.".

SEC. 124. METHANE RECOVERY.

(a) IN GENERAL.—Title I of CERCLA is amended by adding the following new section after section 123:

"SEC. 124. METHANE RECOVERY.

"(a) IN GENERAL.—In the case of a facility at which equipment for the recovery or processing (including recirculation of condensate) of methane has been installed, for purposes of this Act:

"(1) The owner or operator of such equipment shall not be considered an 'owner or operator', as defined in section 101(20), with respect to such facility.

"(2) The owner or operator of such equipment shall not be considered to have arranged for disposal or treatment of any hazardous substance at such facility pursuant to section 107 of this Act.

"(3) The owner or operator of such equipment shall not be subject to any action under section 106 with respect to such facility.

"(b) EXCEPTIONS.—Subsection (a) does not apply with respect to a release or threatened release of a hazardous substance from a facility described in subsection (a) if either of the following circumstances exist:

"(1) The release or threatened release was primarily caused by activities of the owner or operator of the equipment described in subsection (a).

"(2) The owner or operator of such equipment would be covered by paragraph (1), (2), (3), or (4) of subsection (a) of section 107 with respect to such release or threatened release if he were not the owner or operator of such equipment.

In the case of any release or threatened release referred to in paragraph (1), the owner or operator of the equipment described in subsection (a) shall be liable under this Act only for costs or damages primarily caused by the activities of such owner or operator.".

(b) REGULATION UNDER THE SOLID WASTE DISPOSAL ACT.—Unless the Administrator of the Environmental Protection Agency promulgates regulations under subtitle C of the Solid Waste Disposal Act addressing the extraction of wastes from landfills as part of the process of recovering methane from such landfills, the owner and operator of equipment used to recover methane from a landfill shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or liquid wastes within the meaning of that subtitle. If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from the gas recovered from the landfill meets any of the characteristics identified under section 3001 of subtitle C of the Solid Waste Disposal Act, the preceding sentence shall not apply and such condensate phase or other waste material shall be deemed a hazardous waste under that subtitle, and shall be regulated accordingly.

SEC. 125. CERTAIN SPECIAL STUDY WASTES.

Title I of CERCLA is amended by adding the following new section after section 124:

"SEC. 125. SECTION 3001(b)(3)(A)(i) WASTE.

"(a) REVISION OF HAZARD RANKING SYSTEM.—This section shall apply only to facilities which are not included or proposed for inclusion on the National Priorities List and which contain substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act. As expeditiously as practicable, the President shall revise the hazard ranking system in effect under the National Contingency Plan with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

"(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

"(2) The extent of, and potential for, release of such hazardous constituents into the environment.

"(3) The degree of risk to human health and the environment posed by such constituents.

"(b) INCLUSION PROHIBITED.—Until the hazard ranking system is revised as required by this section, the President may not include on the National Priorities List any facility which contains substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the President's authority to include any such facility on the National Priorities List based on the presence of other substances at such facility or to exercise any other authority of this Act with respect to such other substances.".

SEC. 126. WORKER PROTECTION STANDARDS.

(a) PROMULGATION.—Within one year after the date of the enactment of this section, the Secretary of Labor shall, pursuant to section 6 of the Occupational Safety and Health Act of 1970, promulgate standards for the health and safety protection of employees engaged in hazardous waste operations.

(b) PROPOSED STANDARDS.—The Secretary of Labor shall issue proposed regulations on such standards which shall include, but need not be limited to, the following worker protection provisions:

(1) SITE ANALYSIS.—Requirements for a formal hazard analysis of the site and development of a site specific plan for worker protection.

(2) TRAINING.—Requirements for contractors to provide initial and routine training of workers before such workers are permitted to engage in hazardous waste operations which would expose them to toxic substances.

(3) MEDICAL SURVEILLANCE.—A program of regular medical examination, monitoring, and surveillance of workers engaged in hazardous waste operations which would expose them to toxic substances.

(4) PROTECTIVE EQUIPMENT.—Requirements for appropriate personal protective equipment, clothing, and respirators for work in hazardous waste operations.

(5) ENGINEERING CONTROLS.—Requirements for engineering controls concerning the use of equipment and exposure of workers engaged in hazardous waste operations.

(6) MAXIMUM EXPOSURE LIMITS.—Requirements for maximum exposure limitations for workers engaged in hazardous waste operations, including necessary monitoring and assessment procedures.

(7) INFORMATIONAL PROGRAM.—A program to inform workers engaged in hazardous waste operations of the nature and degree of toxic exposure likely as a result of such hazardous waste operations.

(8) HANDLING.—Requirements for the handling, transporting, labeling, and disposing of hazardous wastes.

(9) NEW TECHNOLOGY PROGRAM.—A program for the introduction of new equipment or technologies that will maintain worker protections.

(10) DECONTAMINATION PROCEDURES.—Procedures for decontamination.

(11) EMERGENCY RESPONSE.—Requirements for emergency response and protection of workers engaged in hazardous waste operations.

(c) FINAL REGULATIONS.—Final regulations under subsection (a) shall take effect one year after the date they are promulgated. In promulgating final regulations on standards under subsection (a), the Secretary of Labor shall include each of the provisions listed in paragraphs (1) through (11) of subsection (b) unless the Secretary determines that the evidence in the public record considered as a whole does not support inclusion of any such provision.

(d) SPECIFIC TRAINING STANDARDS.—

(1) OFFSITE INSTRUCTION; FIELD EXPERIENCE.—Standards promulgated under subsection (a) shall include training standards requiring that general site workers (such as equipment operators, general laborers, and other supervised personnel) engaged in hazardous substance removal or other activities which expose or potentially expose such workers to hazardous substances receive a minimum of 40 hours of initial instruction off the site, and a minimum of three days of actual field experience under the direct supervision of a trained, experienced supervisor, at the time of assignment. The requirements of the preceding sentence shall not apply to any general site worker who has received the equivalent of such training. Workers who may be exposed to unique or special hazards shall be provided additional training.

(2) TRAINING OF SUPERVISORS.—Standards promulgated under subsection (a) shall include training standards requiring that onsite managers and supervisors directly responsible for the hazardous waste operations (such as foremen) receive the same training as general site workers set forth in paragraph (1) of this subsection and at least eight additional hours of specialized training on managing hazardous waste operations. The requirements of the preceding sentence shall not apply to any person who has received the equivalent of such training.

(3) CERTIFICATION; ENFORCEMENT.—Such training standards shall contain provisions for certifying that general site workers,

onsite managers, and supervisors have received the specified training and shall prohibit any individual who has not received the specified training from engaging in hazardous waste operations covered by the standard.

(4) TRAINING OF EMERGENCY RESPONSE PERSONNEL.—Such training standards shall set forth requirements for the training of workers who are responsible for responding to hazardous emergency situations who may be exposed to toxic substances in carrying out their responsibilities.

(e) INTERIM REGULATIONS.—The Secretary of Labor shall issue interim final regulations under this section within 60 days after the enactment of this section which shall provide no less protection under this section for workers employed by contractors and emergency response workers than the protections contained in the Environmental Protection Agency Manual (1981) "Health and Safety Requirements for Employees Engaged in Field Activities" and existing standards under the Occupational Safety and Health Act of 1970 found in subpart C of part 1926 of title 29 of the Code of Federal Regulations. Such interim final regulations shall take effect upon issuance and shall apply until final regulations become effective under subsection (c).

(f) COVERAGE OF CERTAIN STATE AND LOCAL EMPLOYEES.—Not later than 90 days after the promulgation of final regulations under subsection (a), the Administrator shall promulgate standards identical to those promulgated by the Secretary of Labor under subsection (a). Standards promulgated under this subsection shall apply to employees of State and local governments in each State which does not have in effect an approved State plan under section 18 of the Occupational Safety and Health Act of 1970 providing for standards for the health and safety protection of employees engaged in hazardous waste operations.

(g) GRANT PROGRAM.—

(1) GRANT PURPOSES.—Grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response may be made under this subsection.

(2) ADMINISTRATION.—Grants under this subsection shall be administered by the National Institute of Environmental Health Sciences.

(3) GRANT RECIPIENTS.—Grants shall be awarded to nonprofit organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be engaged in hazardous waste removal or containment or emergency response operations.

SEC. 127. LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS.

(a) DEFINITION OF INCINERATION VESSEL.—Section 101 of CERCLA is amended by adding the following after paragraph (37):

"(38) The term 'incineration vessel' means any vessel which carries hazardous substances for the purpose of incineration of such substances, so long as such substances or residues of such substances are on board.".

(b) LIABILITY.—Section 107 of CERCLA is amended as follows:

(1) Subsection (a)(3) is amended by inserting "or incineration vessel" after "facility".

(2) Subsection (a)(4) is amended by inserting ", incineration vessels" after "facilities".

(3) Subparagraph (A) of subsection (c)(1) is amended by inserting ", other than an incineration vessel," after "vessel".

(4) Subparagraph (B) of subsection (c)(1) is amended by inserting "other than an incineration vessel," after "other vessel,".

(5) Subparagraph (D) of subsection (c)(1) is amended by inserting "any incineration vessel or" before "any facility".

(c) FINANCIAL RESPONSIBILITY.—Section 108(a) of CERCLA is amended as follows:

(1) Paragraph (1) is amended by inserting "to cover the liability prescribed under paragraph (1) of section 107(a) of this Act" after "whichever is greater)";

(2) Add a new paragraph to read as follows:

"(4) In addition to the financial responsibility provisions of paragraph (1) of this subsection, the President shall require additional evidence of financial responsibility for incineration vessels in such amounts, and to cover such liabilities recognized by law, as the President deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and any other factors deemed relevant.".

(d) SAVINGS CLAUSE.—Section 106 of the Marine Protection, Research, and Sanctuaries Act of 1972 is amended by adding the following new subsection at the end thereof:

"(g) SAVINGS CLAUSE.—Nothing in this Act shall restrict, affect or modify the rights of any person (1) to seek damages or enforcement of any standard or limitation under State law, including State common law, or (2) to seek damages under other Federal law, including maritime tort law, resulting from noncompliance with any requirement of this Act or any permit under this Act.".

(e) MARITIME TORT.—Section 107(h) of CERCLA is amended by inserting ", under maritime tort law," after "with this section" and by inserting before the period "or the absence of any physical damage to the proprietary interest of the claimant".

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. POST-CLOSURE LIABILITY PROGRAM STUDY, REPORT TO CONGRESS, AND SUSPENSION OF LIABILITY TRANSFERS.

Subsection (k) of section 107 of CERCLA is amended by adding at the end the following new paragraphs:

"(5) SUSPENSION OF LIABILITY TRANSFER.—Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 111 of this Act, no liability shall be transferred to or assumed by the Post-Closure Liability Trust Fund established by section 232 of this Act prior to completion of the study required under paragraph (6) of this subsection, transmission of a report of such study to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.

"(6) STUDY OF OPTIONS FOR POST-CLOSURE PROGRAM.—

"(A) STUDY.—The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste treatment, storage, and disposal sites after their closure which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

"(B) PROGRAM ELEMENTS.—The program referred to in subparagraph (A) shall be designed to assure each of the following:

"(i) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

"(ii) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems that may arise and to cover costs of long-term monitoring, care, and maintenance of such sites.

"(iii) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

"(C) ASSESSMENTS.—The study under this paragraph shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for different classes of facilities and for different classes of land disposal facilities and shall include but not be limited to—

"(i) the current and future financial capabilities of facility owners and operators;

"(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

"(iii) the availability of mechanisms by which owners and operators of such facilities can assure that current and future costs, including post-closure costs, will be financed.

"(D) PROCEDURES.—In carrying out the responsibilities of this paragraph, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

"(E) CONSIDERATION OF OPTIONS.—In conducting the study under this paragraph, the Comptroller General shall consider various mechanisms and combinations of mecha-

nisms to complement the policies set forth in the Hazardous and Solid Waste Amendments of 1984 to serve the purposes set forth in subparagraph (B) and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to—

"(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act;

"(ii) voluntary risk pooling by owners and operators;

"(iii) legislation to require risk pooling by owners and operators;

"(iv) modification of the Post-Closure Liability Trust Fund previously established by section 232 of this Act, and the conditions for transfer of liability under this subsection, including limiting the transfer of some or all liability under this subsection only in the case of insolvency of owners and operators;

"(v) private insurance;

"(vi) insurance provided by the Federal Government;

"(vii) coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government; and

"(viii) creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

"(F) RECOMMENDATIONS.—The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such program.".

SEC. 202. HAZARDOUS MATERIALS TRANSPORTATION.

(a) REGULATION REQUIREMENT.—Section 306(a) of CERCLA is amended (1) by striking out "within ninety days after the date of enactment of this Act" and inserting in lieu thereof "within 30 days after the enactment of the Superfund Amendments and Reauthorization Act of 1986" and (2) by inserting "and regulated" before "as a hazardous material".

(b) CONFORMING AMENDMENT.—Section 306(b) of CERCLA is amended by inserting "and regulation" after "prior to the effective date of the listing".

SEC. 203. STATE PROCEDURAL REFORM.

(a) IN GENERAL.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 309. ACTIONS UNDER STATE LAW FOR DAMAGES FROM EXPOSURE TO HAZARDOUS SUBSTANCES.

"(a) STATE STATUTES OF LIMITATIONS FOR HAZARDOUS SUBSTANCE CASES.—

"(1) EXCEPTION TO STATE STATUTES.—In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any haz-

ardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.

"(2) STATE LAW GENERALLY APPLICABLE.—Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

"(3) ACTIONS UNDER SECTION 107.—Nothing in this section shall apply with respect to any cause of action brought under section 107 of this Act.

"(b) DEFINITIONS.—As used in this section—

"(1) TITLE I TERMS.—The terms used in this section shall have the same meaning as when used in title I of this Act.

"(2) APPLICABLE LIMITATIONS PERIOD.—The term 'applicable limitations period' means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) may be brought.

"(3) COMMENCEMENT DATE.—The term 'commencement date' means the date specified in a statute of limitations as the beginning of the applicable limitations period.

"(4) FEDERALLY REQUIRED COMMENCEMENT DATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'federally required commencement date' means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) were caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

"(B) SPECIAL RULES.—In the case of a minor or incompetent plaintiff, the term 'federally required commencement date' means the later of the date referred to in subparagraph (A) or the following:

"(i) In the case of a minor, the date on which the minor reaches the age of majority, as determined by State law, or has a legal representative appointed.

"(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall take effect with respect to actions brought after December 11, 1980.

SEC. 204. CONFORMING AMENDMENT TO FUNDING PROVISIONS.

(a) HAZARDOUS SUBSTANCES SUPERFUND.—Section 221(a) of CERCLA is amended by striking out "Hazardous Substance Response Trust Fund" and inserting in lieu thereof "Hazardous Substances Superfund".

(b) CROSS REFERENCE TO FUNDING PROVISIONS.—Section 221(c) of CERCLA is amended to read as follows:

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Hazardous Substances Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 shall be available for expenditure only as provided in section 111 of this Act.".

SEC. 205. CLEANUP OF PETROLEUM FROM LEAKING UNDERGROUND STORAGE TANKS.

(a) DEFINITION OF PETROLEUM.—Section 9001(2)(B) of the Solid Waste Disposal Act is amended by striking out all that follows "petroleum" and inserting in lieu thereof a period. Section 9001 of such Act is amended by adding at the end thereof the following:

"(8) The term 'petroleum' means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).".

(b) STATE INVENTORIES.—Section 9002 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(c) STATE INVENTORIES.—Each State shall make 2 separate inventories of all underground storage tanks in such State containing regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the State shall utilize and aggregate the data in the notification forms submitted pursuant to subsections (a) and (b) of this section. Each State shall submit such aggregated data to the Administrator not later than 270 days after the enactment of the Superfund Amendments and Reauthorization Act of 1986.".

(c) FINANCIAL RESPONSIBILITY.—

(1) REQUIREMENTS.—Section 9003(c) of the Solid Waste Disposal Act is amended by striking "and" at the end of paragraph (4), striking the period at the end of paragraph (5) and substituting "; and" and by adding the following new paragraph at the end thereof:

"(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.".

(2) CONFORMING AMENDMENT.—Section 9003(d) of such Act is amended by striking out paragraph (1) and renumbering paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(3) OTHER METHODS.—Section 9003(d)(1) of such Act (as redesignated by paragraph (2) of this subsection) is amended by striking out "or" after "credit," and by striking out the period at the end thereof and inserting in lieu thereof the following: "or any other method satisfactory to the Administrator.".

(4) Section 9003(d) of such Act is further amended by adding at the end thereof the following new paragraph:

"(5)(A) The Administrator, in promulgating financial responsibility regulations under this section, may establish an amount

of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than $1,000,000 for each occurrence with an appropriate aggregate requirement.

"(B) The Administrator may set amounts lower than the amounts required by subparagraph (A) of this paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

"(C) In establishing classes and categories for purposes of this paragraph, the Administrator may consider the following factors:

"(i) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.

"(ii) The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.

"(iii) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.

"(iv) The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.

"(v) Such other factors as the Administrator deems pertinent.

"(D) The Administrator may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks or in a particular State, if the Administrator makes a determination that methods of financial responsibility satisfying the requirements of this subsection are not generally available for underground storage tanks in that class or category, and—

"(i) steps are being taken to form a risk retention group for such class of tanks; or

"(ii) such State is taking steps to establish a fund pursuant to section 9004(c)(1) of this Act to be submitted as evidence of financial responsibility.

A suspension by the Administrator pursuant to this paragraph shall extend for a period not to exceed 180 days. A determination to suspend may be made with respect to the same class or category or for the same State at the end of such period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the Administrator finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund pursuant to clause (ii).".

(d) EPA RESPONSE PROGRAM.—Section 9003 of the Solid Waste Disposal Act is amended by adding after subsection (g) the following new subsection:

"(h) EPA RESPONSE PROGRAM FOR PETROLEUM.—

"(1) BEFORE REGULATIONS.—Before the effective date of regulations under subsection (c), the Administrator (or a State pursuant to paragraph (7)) is authorized to—

"(A) require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when the Administrator (or the State) determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

"(B) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. The Administrator shall use funds in the Leaking Underground Storage Tank Trust Fund for payment of costs incurred for corrective action under subparagraph (B), enforcement action under subparagraph (A), and cost recovery under paragraph (6) of this subsection. Subject to the priority requirements of paragraph (3), the Administrator (or the State) shall give priority in undertaking such actions under subparagraph (B) to cases where the Administrator (or the State) cannot identify a solvent owner or operator of the tank who will undertake action properly.

"(2) AFTER REGULATIONS.—Following the effective date of regulations under subsection (c), all actions or orders of the Administrator (or a State pursuant to paragraph (7)) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator (or the State) may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment and one or more of the following situations exists:

"(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

"(i) an owner or operator of the tank concerned,

"(ii) subject to such corrective action regulations, and

"(iii) capable of carrying out such corrective action properly.

"(B) A situation exists which requires prompt action by the Administrator (or the State) under this paragraph to protect human health and the environment.

"(C) Corrective action costs at a facility exceed the amount of coverage required by the Administrator pursuant to the provisions of subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Leaking Underground Storage Tank Trust Fund are necessary to assure an effective corrective action.

"(D) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under this subsection or section 9006 or with the order of a State under this subsection to comply with the corrective action regulations.

"(3) PRIORITY OF CORRECTIVE ACTIONS.—The Administrator (or a State pursuant to paragraph (7)) shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

"(4) CORRECTIVE ACTION ORDERS.—The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (A) of paragraph (1) or to carry out regulations issued under subsection (c)(4). A State acting pursuant to paragraph (7) of this subsection is authorized to carry out subparagraph (A) of paragraph (1) only until the State's program is approved by the Administrator under section 9004 of this subtitle. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 9006.

"(5) ALLOWABLE CORRECTIVE ACTIONS.—The corrective actions undertaken by the Administrator (or a State pursuant to paragraph (7)) under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may undertake an exposure assessment as defined in paragraph (10) of this subsection or provide for such an assessment in a cooperative agreement with a State pursuant to paragraph (7) of this subsection. The costs of any such assessment may be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

"(6) RECOVERY OF COSTS.—

"(A) IN GENERAL.—Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

"(B) RECOVERY.—In determining the equities for seeking the recovery of costs under subparagraph (A), the Administrator (or a State pursuant to paragraph (7) of this subsection) may consider the amount of financial responsibility required to be maintained under subsections (c) and (d)(5) of this section and the factors considered in establishing such amount under subsection (d)(5).

"(C) EFFECT ON LIABILITY.—

"(i) NO TRANSFERS OF LIABILITY.—No indemnification, hold harmless, or similar agreement or convey-

ance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

"(ii) NO BAR TO CAUSE OF ACTION.—Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

"(D) FACILITY.—For purposes of this paragraph, the term 'facility' means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

"(7) STATE AUTHORITIES.—

"(A) GENERAL.—A State may exercise the authorities in paragraphs (1) and (2) of this subsection, subject to the terms and conditions of paragraphs (3), (5), (9), (10), and (11), and including the authorities of paragraphs (4), (6), and (8) of this subsection if—

"(i) the Administrator determines that the State has the capabilities to carry out effective corrective actions and enforcement activities; and

"(ii) the Administrator enters into a cooperative agreement with the State setting out the actions to be undertaken by the State.

The Administrator may provide funds from the Leaking Underground Storage Tank Trust Fund for the reasonable costs of the State's actions under the cooperative agreement.

"(B) COST SHARE.—Following the effective date of the regulations under subsection (c) of this section, the State shall pay 10 per centum of the cost of corrective actions undertaken either by the Administrator or by the State under a cooperative agreement, except that the Administrator may take corrective action at a facility where immediate action is necessary to respond to an imminent and substantial endangerment to human health or the environment if the State fails to pay the cost share.

"(8) EMERGENCY PROCUREMENT POWERS.—Notwithstanding any other provision of law, the Administrator may authorize the use of such emergency procurement powers as he deems necessary.

"(9) DEFINITION OF OWNER.—As used in this subsection, the term 'owner' does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and

marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank.

"(10) DEFINITION OF EXPOSURE ASSESSMENT.—As used in this subsection, the term 'exposure assessment' means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum from a release from an underground storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

"(11) FACILITIES WITHOUT FINANCIAL RESPONSIBILITY.—At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by subsection (d)(5)(A) of this section (or a lesser amount if such amount is applicable to such facility as a result of subsection (d)(5)(B) of this section) for whatever reason the Administrator shall expend no monies from the Leaking Underground Storage Tank Trust Fund to clean up releases at such facility pursuant to the provisions of paragraph (1) or (2) of this subsection. At such facilities the Administrator shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection and section 9006 of this subtitle to order corrective action to clean up such releases. States acting pursuant to paragraph (7) of this subsection shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection to order corrective action to clean up such releases. Notwithstanding the provisions of this paragraph, the Administrator may use monies from the fund to take the corrective actions authorized by paragraph (5) of this subsection to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of paragraph (6)(A) of this subsection and without consideration of the factors in paragraph (6)(B) of this subsection. Nothing in this paragraph shall prevent the Administrator (or a State pursuant to paragraph (7) of this subsection) from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.".

(e) FINANCIAL RESPONSIBILITY IN STATE PROGRAMS.—

(1) Section 9004(c)(1) of the Solid Waste Disposal Act is amended by striking out "financed by fees on tank owners and operators and".

(2) Section 9004(c)(2) of the Solid Waste Disposal Act is amended by striking out "or" after "credit," in the first sentence and by striking out the period at the end thereof and inserting in lieu thereof the following: "or any other method satis-

factory to the Administrator.". Such section is further amended by adding after the word "terms" in the second sentence the following: "including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 9003(d)(5)".

(f) AUTHORITY TO ENTER FOR CORRECTIVE ACTIONS.—

(1) Section 9005(a) of the Solid Waste Disposal Act is amended by inserting the words "taking any corrective action" after the word "study", inserting the words "acting pursuant to subsection (h)(7) of section 9003 or" after the words "or representative of a State", striking the word "and" before the words "permit such officer", and inserting the words "and permit such officer to have access for corrective action" after the words "relating to such tanks" in the first sentence thereof. Such section is further amended by inserting the words "taking corrective action," after the word "study," in the second sentence thereof.

(2) Section 9005(a) of the Solid Waste Disposal Act is amended by striking the word "and" at the end of paragraph (2), striking out the period at the end of paragraph (3) and inserting "; and", and adding the following new paragraph at the end thereof—

"(4) to take corrective action.".

(3) Section 9005 of the Solid Waste Disposal Act is amended by changing the heading thereof to read as follows—

"INSPECTIONS, MONITORING, TESTING AND CORRECTIVE ACTION".

(g) COORDINATION WITH OTHER LAWS.—Section 9008 of the Solid Waste Disposal Act is amended to read as follows:

"STATE AUTHORITY

"SEC. 9008. Nothing in this subtitle shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subtitle or to impose any additional liability with respect to the release of regulated substances within such State or political subdivision.".

(h) POLLUTION LIABILITY INSURANCE.—

(1) STUDY.—The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of underground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider the experience of owners and operators of marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act and the operation of the Water Quality Insurance Syndicate.

(2) REPORT.—The Comptroller General shall report the findings under this subsection to the Congress within 15 months after the enactment of this subsection. Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide all clean-up costs and damages that may result from reasonably foreseeable releases and events.

(i) CRIMINAL PENALTIES RELATING TO USED OIL.—Subtitle C of the Solid Waste Disposal Act is amended as follows:

(1) In paragraphs (4) and (5) of section 3008(d) after "hazardous waste" insert "or any used oil not identified or listed as a hazardous waste under this subtitle".

(2) Delete "accompanied by a manifest; ; or" in paragraph (5) and insert "accompanied by a manifest;".

(3) Insert "; or" after paragraph (6).

(4) Add the following new paragraph after paragraph (6):

"(7) knowingly stores, treats, transports, or causes to be transported, disposes of, or otherwise handles any used oil not identified or listed as a hazardous waste under subtitle C of the Solid Waste Disposal Act—

"(A) in knowing violation of any material condition or requirement of a permit under this subtitle C; or

"(B) in knowing violation of any material condition or requirement of any applicable regulations or standards under this Act;".

(5) In section 3008(e):

(A) Insert "or used oil not identified or listed as a hazardous waste under this subtitle" immediately after "this subtitle".

(B) Strike "or" immediately before "(6)".

(C) Insert ", or (7)" immediately after "(6)".

(j) STATE PROGRAMS FOR USED OIL.—Section 3006 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(h) STATE PROGRAMS FOR USED OIL.—In the case of used oil which is not listed or identified under this subtitle as a hazardous waste but which is regulated under section 3014, the provisions of this section regarding State programs shall apply in the same manner and to the same extent as such provisions apply to hazardous waste identified or listed under this subtitle.".

SEC. 206. CITIZENS SUITS.

Title III of CERCLA is amended by adding the following new section after section 309:

"SEC. 310. CITIZENS SUITS.

"(a) AUTHORITY TO BRING CIVIL ACTIONS.—Except as provided in subsections (d) and (e) of this section and in section 113(h) (relating to timing of judicial review), any person may commence a civil action on his own behalf—

"(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition,

requirement, or order which has become effective pursuant to this Act (including any provision of an agreement under section 120, relating to Federal facilities); or

"(2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the ATSDR) where there is alleged a failure of the President or of such other officer to perform any act or duty under this Act, including an act or duty under section 120 (relating to Federal facilities), which is not discretionary with the President or such other officer.

Paragraph (2) shall not apply to any act or duty under the provisions of section 311 (relating to research, development, and demonstration).

"(b) VENUE.—

"(1) ACTIONS UNDER SUBSECTION (a)(1).—Any action under subsection (a)(1) shall be brought in the district court for the district in which the alleged violation occurred.

"(2) ACTIONS UNDER SUBSECTION (a)(2).—Any action brought under subsection (a)(2) may be brought in the United States District Court for the District of Columbia.

"(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a)(1) to enforce the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120), to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order the President or other officer to perform the act or duty concerned.

"(d) RULES APPLICABLE TO SUBSECTION (a)(1) ACTIONS.—

"(1) NOTICE.—No action may be commenced under subsection (a)(1) of this section before 60 days after the plaintiff has given notice of the violation to each of the following:

"(A) The President.

"(B) The State in which the alleged violation occurs.

"(C) Any alleged violator of the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120).

Notice under this paragraph shall be given in such manner as the President shall prescribe by regulation.

"(2) DILIGENT PROSECUTION.—No action may be commenced under paragraph (1) of subsection (a) if the President has commenced and is diligently prosecuting an action under this Act, or under the Solid Waste Disposal Act to require compliance with the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120).

"(e) RULES APPLICABLE TO SUBSECTION (a)(2) ACTIONS.—No action may be commenced under paragraph (2) of subsection (a) before the 60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the President shall prescribe by regulation.

"(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(g) INTERVENTION.—In any action under this section, the United States or the State, or both, if not a party may intervene as a matter of right. For other provisions regarding intervention, see section 113.

"(h) OTHER RIGHTS.—This Act does not affect or otherwise impair the rights of any person under Federal, State, or common law, except with respect to the timing of review as provided in section 113(h) or as otherwise provided in section 309 (relating to actions under State law).

"(i) DEFINITIONS.—The terms used in this section shall have the same meanings as when used in title I.".

SEC. 207. INDIAN TRIBES.

(a) DEFINITION.—For definition of Indian tribe, see the amendments made by section 101 of this Act.

(b) FUTURE MAINTENANCE AND COST SHARING.—Section 104(c)(3) of CERCLA is amended by adding at the end thereof the following: "In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.".

(c) LIABILITY.—Section 107 of CERCLA is amended as follows:

(1) In subsection (a) by inserting "or an Indian tribe" after "State";

(2) In subsection (f):

(A) Insert after "State" the third time that word appears the following: "and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation".

(B) Insert "or Indian tribe" after "State" the fourth time that word appears.

(C) Add before the period at the end of the first sentence the following: ", so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe".

(D) Insert "or the Indian tribe" after "State government".

(3) In subsection (i) insert "or Indian tribe" after "State" the first time it appears.

(4) In subsection (j) insert "or Indian tribe" after "State" the first time it appears.

(d) NATURAL RESOURCES CLAIMS, DELEGATION, ETC.—Section 111 of CERCLA is amended as follows:

(1) In subsection (b), insert before the period at the end thereof the following: ", or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation";

(2) In subsection (c)(2) insert "or Indian tribe" after "State".

(3) In subsection (f) insert "or Indian tribe" after "State"; and

(4) In subsection (i) insert after "State," the following: "and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation,".

(e) TREATMENT OF TRIBES GENERALLY.—Title I of CERCLA is amended by adding the following new section after section 125:

"SEC. 126. INDIAN TRIBES.

"(a) TREATMENT GENERALLY.—The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 104(i) (regarding health authorities) and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities List).

"(b) COMMUNITY RELOCATION.—Should the President determine that proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred in by the affected tribal government before relocation shall occur. The President, in cooperation with the Secretary of the Interior, shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe.

"(c) STUDY.—The President shall conduct a survey, in consultation with the Indian tribes, to determine the extent of hazardous waste sites on Indian lands. Such survey shall be included within a report which shall make recommendations on the program needs of tribes under this Act, with particular emphasis on how tribal participation in the administration of such programs can be maximized. Such report shall be submitted to Congress along with the President's budget request for fiscal year 1988.

"(d) LIMITATION.—Notwithstanding any other provision of this Act, no action under this Act by an Indian tribe shall be barred until the later of the following:

"(1) The applicable period of limitations has expired.

"(2) 2 years after the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this Act.".

SEC. 208. INSURABILITY STUDY.

Section 301 of CERCLA is amended by adding the following new subsection at the end thereof:

"(g) INSURABILITY STUDY.—

"(1) STUDY BY COMPTROLLER GENERAL.—The Comptroller General of the United States, in consultation with the persons described in paragraph (2), shall undertake a study to determine the insurability, and effects on the standard of care, of the liability of each of the following:

"(A) Persons who generate hazardous substances: liability for costs and damages under this Act.

"(B) Persons who own or operate facilities: liability for costs and damages under this Act.

"(C) Persons liable for injury to persons or property caused by the release of hazardous substances into the environment.

"(2) CONSULTATION.—In conducting the study under this subsection, the Comptroller General shall consult with the following:

"(A) Representatives of the Administrator.

"(B) Representatives of persons described in subparagraphs (A) through (C) of the preceding paragraph.

"(C) Representatives (i) of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances and (ii) of groups organized for protecting the interests of consumers.

"(D) Representatives of property and casualty insurers.

"(E) Representatives of reinsurers.

"(F) Persons responsible for the regulation of insurance at the State level.

"(3) ITEMS EVALUATED.—The study under this section shall include, among other matters, an evaluation of the following:

"(A) Current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

"(B) Current trends in statutory and common law remedies.

"(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

"(D) The effect of the standard of liability and extent of the persons upon whom it is imposed under this Act on the protection of human health and the environment and on

the availability, underwriting, and pricing of insurance coverage.

"(E) Current trends, if any, in the judicial interpretation and construction of applicable insurance contracts, together with the degree to which amendments in the language of such contracts and the description of the risks assumed, could affect such trends.

"(F) The frequency and severity of a representative sample of claims closed during the calendar year immediately preceding the enactment of this subsection.

"(G) Impediments to the acquisition of insurance or other means of obtaining liability coverage other than those referred to in the preceding subparagraphs.

"(H) The effects of the standards of liability and financial responsibility requirements imposed pursuant to this Act on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies, as well as waste generation minimization.

"(4) SUBMISSION.—The Comptroller General shall submit a report on the results of the study to Congress with appropriate recommendations within 12 months after the enactment of this subsection.".

SEC. 209. RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

(a) PURPOSE.—The purposes of this section are as follows:

(1) To establish a comprehensive and coordinated Federal program of research, development, demonstration, and training for the purpose of promoting the development of alternative and innovative treatment technologies that can be used in response actions under the CERCLA program, to provide incentives for the development and use of such technologies, and to improve the scientific capability to assess, detect and evaluate the effects on and risks to human health from hazardous substances.

(2) To establish a basic university research and education program within the Department of Health and Human Services and a research, demonstration, and training program within the Environmental Protection Agency.

(3) To reserve certain funds from the Hazardous Substance Trust Fund to support a basic research program within the Department of Health and Human Services, and an applied and developmental research program within the Environmental Protection Agency.

(4) To enhance the Environmental Protection Agency's internal research capabilities related to CERCLA activities, including site assessment and technology evaluation.

(5) To provide incentives for the development of alternative and innovative treatment technologies in a manner that supplements or coordinates with, but does not compete with or duplicate, private sector development of such technologies.

(b) AMENDMENT OF CERCLA.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 311. RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

"(a) HAZARDOUS SUBSTANCE RESEARCH AND TRAINING.—

"(1) AUTHORITIES OF SECRETARY.—The Secretary of Health and Human Services (hereinafter in this subsection referred to as the Secretary), in consultation with the Administrator, shall establish and support a basic research and training program (through grants, cooperative agreements, and contracts) consisting of the following:

"(A) Basic research (including epidemiologic and ecologic studies) which may include each of the following:

"(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

"(ii) Methods to assess the risks to human health presented by hazardous substances.

"(iii) Methods and technologies to detect hazardous substances in the environment and basic biological, chemical, and physical methods to reduce the amount and toxicity of hazardous substances.

"(B) Training, which may include each of the following:

"(i) Short courses and continuing education for State and local health and environment agency personnel and other personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the hazards to human health presented by such facilities.

"(ii) Graduate or advanced training in environmental and occupational health and safety and in the public health and engineering aspects of hazardous waste control.

"(iii) Graduate training in the geosciences, including hydrogeology, geological engineering, geophysics, geochemistry, and related fields necessary to meet professional personnel needs in the public and private sectors and to effectuate the purposes of this Act.

"(2) DIRECTOR OF NIEHS.—The Director of the National Institute for Environmental Health Sciences shall cooperate fully with the relevant Federal agencies referred to in subparagraph (A) of paragraph (5) in carrying out the purposes of this section.

"(3) RECIPIENTS OF GRANTS, ETC.—A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an accredited institution of higher education. The institution may carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with any of the following:

"(A) Generators of hazardous wastes.

"(B) Persons involved in the detection, assessment, evaluation, and treatment of hazardous substances.

"(C) Owners and operators of facilities at which hazardous substances are located.

"(D) State and local governments.

"(4) PROCEDURES.—In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary shall act through the Director of the National Institute for Environmental Health Sciences. In considering the alloca-

tion of funds for training purposes, the Director shall ensure that at least one grant, cooperative agreement, or contract shall be awarded for training described in each of clauses (i), (ii), and (iii) of paragraph (1)(B). Where applicable, the Director may choose to operate training activities in cooperation with the Director of the National Institute for Occupational Safety and Health. The procedures applicable to grants and contracts under title IV of the Public Health Service Act shall be followed under this subsection.

"(5) ADVISORY COUNCIL.—To assist in the implementation of this subsection and to aid in the coordination of research and demonstration and training activities funded from the Fund under this section, the Secretary shall appoint an advisory council (hereinafter in this subsection referred to as the 'Advisory Council') which shall consist of representatives of the following:

"(A) The relevant Federal agencies.
"(B) The chemical industry.
"(C) The toxic waste management industry.
"(D) Institutions of higher education.
"(E) State and local health and environmental agencies.
"(F) The general public.

"(6) PLANNING.—Within nine months after the date of the enactment of this subsection, the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph (1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The Secretary shall, to the maximum extent practicable, take appropriate steps to coordinate program activities under this plan with the activities of other Federal agencies in order to avoid duplication of effort. The plan shall be consistent with the need for the development of new technologies for meeting the goals of response actions in accordance with the provisions of this Act. The Advisory Council shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordination among the relevant Federal agencies referred to in subparagraph (A) of paragraph (5).

"(b) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGY RESEARCH AND DEMONSTRATION PROGRAM.—

"(1) ESTABLISHMENT.—The Administrator is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies (hereinafter in this subsection referred to as the 'program') which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

"(2) ADMINISTRATION.—The program shall be administered by the Administrator, acting through an office of technology demonstration and shall be coordinated with programs carried out by the Office of Solid Waste and Emergency Response and the Office of Research and Development.

"(3) CONTRACTS AND GRANTS.—In carrying out the program, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, persons, public entities, and nonprofit private entities which are exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1954. The Administrator shall, to the maximum extent possible, enter into appropriate cost sharing arrangements under this subsection.

"(4) USE OF SITES.—In carrying out the program, the Administrator may arrange for the use of sites at which a response may be undertaken under section 104 for the purposes of carrying out research, testing, evaluation, development, and demonstration projects. Each such project shall be carried out under such terms and conditions as the Administrator shall require to assure the protection of human health and the environment and to assure adequate control by the Administrator of the research, testing, evaluation, development, and demonstration activities at the site.

"(5) DEMONSTRATION ASSISTANCE.—

"(A) PROGRAM COMPONENTS.—The demonstration assistance program shall include the following:

"(i) The publication of a solicitation and the evaluation of applications for demonstration projects utilizing alternative or innovative technologies.

"(ii) The selection of sites which are suitable for the testing and evaluation of innovative technologies.

"(iii) The development of detailed plans for innovative technology demonstration projects.

"(iv) The supervision of such demonstration projects and the providing of quality assurance for data obtained.

"(v) The evaluation of the results of alternative innovative technology demonstration projects and the determination of whether or not the technologies used are effective and feasible.

"(B) SOLICITATION.—Within 90 days after the date of the enactment of this section, and no less often than once every 12 months thereafter, the Administrator shall publish a solicitation for innovative or alternative technologies at a stage of development suitable for full-scale demonstrations at sites at which a response action may be undertaken under section 104. The purpose of any such project shall be to demonstrate the use of an alternative or innovative treatment technology with respect to hazardous substances or pollutants or contaminants which are located at the site or which are to be removed from the site. The solicitation notice shall prescribe information to be included in the application, including technical and economic data derived from the applicant's own research and development efforts, and other information sufficient to permit the Administrator to assess the technology's potential and the types of remedial action to which it may be applicable.

"(C) APPLICATIONS.—Any person and any public or private nonprofit entity may submit an application to the Ad-

ministrator in response to the solicitation. The application shall contain a proposed demonstration plan setting forth how and when the project is to be carried out and such other information as the Administrator may require.

"(D) PROJECT SELECTION.—In selecting technologies to be demonstrated, the Administrator shall fully review the applications submitted and shall consider at least the criteria specified in paragraph (7). The Administrator shall select or refuse to select a project for demonstration under this subsection within 90 days of receiving the completed application for such project. In the case of a refusal to select the project, the Administrator shall notify the applicant within such 90-day period of the reasons for his refusal.

"(E) SITE SELECTION.—The Administrator shall propose 10 sites at which a response may be undertaken under section 104 to be the location of any demonstration project under this subsection within 60 days after the close of the public comment period. After an opportunity for notice and public comment, the Administrator shall select such sites and projects. In selecting any such site, the Administrator shall take into account the applicant's technical data and preferences either for onsite operation or for utilizing the site as a source of hazardous substances or pollutants or contaminants to be treated offsite.

"(F) DEMONSTRATION PLAN.—Within 60 days after the selection of the site under this paragraph to be the location of a demonstration project, the Administrator shall establish a final demonstration plan for the project, based upon the demonstration plan contained in the application for the project. Such plan shall clearly set forth how and when the demonstration project will be carried out.

"(G) SUPERVISION AND TESTING.—Each demonstration project under this subsection shall be performed by the applicant, or by a person satisfactory to the applicant, under the supervision of the Administrator. The Administrator shall enter into a written agreement with each applicant granting the Administrator the responsibility and authority for testing procedures, quality control, monitoring, and other measurements necessary to determine and evaluate the results of the demonstration project. The Administrator may pay the costs of testing, monitoring, quality control, and other measurements required by the Administrator to determine and evaluate the results of the demonstration project, and the limitations established by subparagraph (J) shall not apply to such costs.

"(H) PROJECT COMPLETION.—Each demonstration project under this subsection shall be completed within such time as is established in the demonstration plan.

"(I) EXTENSIONS.—The Administrator may extend any deadline established under this paragraph by mutual agreement with the applicant concerned.

"(J) FUNDING RESTRICTIONS.—The Administrator shall not provide any Federal assistance for any part of a full-scale field demonstration project under this subsection to

any applicant unless such applicant can demonstrate that it cannot obtain appropriate private financing on reasonable terms and conditions sufficient to carry out such demonstration project without such Federal assistance. The total Federal funds for any full-scale field demonstration project under this subsection shall not exceed 50 percent of the total cost of such project estimated at the time of the award of such assistance. The Administrator shall not expend more than $10,000,000 for assistance under the program in any fiscal year and shall not expend more than $3,000,000 for any single project.

"(6) FIELD DEMONSTRATIONS.—In carrying out the program, the Administrator shall initiate or cause to be initiated at least 10 field demonstration projects of alternative or innovative treatment technologies at sites at which a response may be undertaken under section 104, in fiscal year 1987 and each of the succeeding three fiscal years. If the Administrator determines that 10 field demonstration projects under this subsection cannot be initiated consistent with the criteria set forth in paragraph (7) in any of such fiscal years, the Administrator shall transmit to the appropriate committees of Congress a report explaining the reasons for his inability to conduct such demonstration projects.

"(7) CRITERIA.—In selecting technologies to be demonstrated under this subsection, the Administrator shall, consistent with the protection of human health and the environment, consider each of the following criteria:

"(A) The potential for contributing to solutions to those waste problems which pose the greatest threat to human health, which cannot be adequately controlled under present technologies, or which otherwise pose significant management difficulties.

"(B) The availability of technologies which have been sufficiently developed for field demonstration and which are likely to be cost-effective and reliable.

"(C) The availability and suitability of sites for demonstrating such technologies, taking into account the physical, biological, chemical, and geological characteristics of the sites, the extent and type of contamination found at the site, and the capability to conduct demonstration projects in such a manner as to assure the protection of human health and the environment.

"(D) The likelihood that the data to be generated from the demonstration project at the site will be applicable to other sites.

"(8) TECHNOLOGY TRANSFER.—In carrying out the program, the Administrator shall conduct a technology transfer program including the development, collection, evaluation, coordination, and dissemination of information relating to the utilization of alternative or innovative treatment technologies for response actions. The Administrator shall establish and maintain a central reference library for such information. The information maintained by the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5 of

the United States Code and section 1905 of title 18 of the United States Code, and to other Government agencies in a manner that will facilitate its dissemination; except, that upon a showing satisfactory to the Administrator by any person that any information or portion thereof obtained under this subsection by the Administrator directly or indirectly from such person, would, if made public, divulge—

"(A) trade secrets; or

"(B) other proprietary information of such person,

the Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18 of the United States Code. This subsection is not authority to withhold information from Congress or any committee of Congress upon the request of the chairman of such committee.

"(9) TRAINING.—The Administrator is authorized and directed to carry out, through the office of technology demonstration, a program of training and an evaluation of training needs for each of the following:

"(A) Training in the procedures for the handling and removal of hazardous substances for employees who handle hazardous substances.

"(B) Training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities for State and local health and environment agency personnel.

"(10) DEFINITION.—For purposes of this subsection, the term 'alternative or innovative treatment technologies' means those technologies, including proprietary or patented methods, which permanently alter the composition of hazardous waste through chemical, biological, or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous waste or contaminated materials being treated. The term also includes technologies that characterize or assess the extent of contamination, the chemical and physical character of the contaminants, and the stresses imposed by the contaminants on complex ecosystems at sites.

"(c) HAZARDOUS SUBSTANCE RESEARCH.—The Administrator may conduct and support, through grants, cooperative agreements, and contracts, research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment. The Administrator shall coordinate such research with the Secretary of Health and Human Services, acting through the advisory council established under this section, in order to avoid duplication of effort.

"(d) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—

"(1) GRANT PROGRAM.—The Administrator shall make grants to institutions of higher learning to establish and operate not fewer than 5 hazardous substance research centers in the United States. In carrying out the program under this subsection, the Administrator should seek to have established and operated 10 hazardous substance research centers in the United States.

"(2) RESPONSIBILITIES OF CENTERS.—The responsibilities of each hazardous substance research center established under this subsection shall include, but not be limited to, the conduct of research and training relating to the manufacture, use, transportation, disposal, and management of hazardous substances and publication and dissemination of the results of such research.

"(3) APPLICATIONS.—Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

"(4) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

"(A) The hazardous substance research center shall be located in a State which is representative of the needs of the region in which such State is located for improved hazardous waste management.

"(B) The grant recipient shall be located in an area which has experienced problems with hazardous substance management.

"(C) There is available to the grant recipient for carrying out this subsection demonstrated research resources.

"(D) The capability of the grant recipient to provide leadership in making national and regional contributions to the solution of both long-range and immediate hazardous substance management problems.

"(E) The grant recipient shall make a commitment to support ongoing hazardous substance research programs with budgeted institutional funds of at least $100,000 per year.

"(F) The grant recipient shall have an interdisciplinary staff with demonstrated expertise in hazardous substance management and research.

"(G) The grant recipient shall have a demonstrated ability to disseminate results of hazardous substance research and educational programs through an interdisciplinary continuing education program.

"(H) The projects which the grant recipient proposes to carry out under the grant are necessary and appropriate.

"(5) MAINTENANCE OF EFFORT.—No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional hazardous substance research center and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding the date of the enactment of this subsection.

"(6) FEDERAL SHARE.—The Federal share of a grant under this subsection shall not exceed 80 percent of the costs of establishing and operating the regional hazardous substance re-

search center and related research activities carried out by the grant recipient.

"(7) LIMITATION ON USE OF FUNDS.—No funds made available to carry out this subsection shall be used for acquisition of real property (including buildings) or construction of any building.

"(8) ADMINISTRATION THROUGH THE OFFICE OF THE ADMINISTRATOR.—Administrative responsibility for carrying out this subsection shall be in the Office of the Administrator.

"(9) EQUITABLE DISTRIBUTION OF FUNDS.—The Administrator shall allocate funds made available to carry out this subsection equitably among the regions of the United States.

"(10) TECHNOLOGY TRANSFER ACTIVITIES.—Not less than five percent of the funds made available to carry out this subsection for any fiscal year shall be available to carry out technology transfer activities.

"(e) REPORT TO CONGRESS.—At the time of the submission of the annual budget request to Congress, the Administrator shall submit to the appropriate committees of the House of Representatives and the Senate and to the advisory council established under subsection (a), a report on the progress of the research, development, and demonstration program authorized by subsection (b), including an evaluation of each demonstration project completed in the preceding fiscal year, findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous wastes, the costs of such demonstration projects, and the potential applicability of, and projected costs for, such technologies at other hazardous substance sites.

"(f) SAVING PROVISION.—Nothing in this section shall be construed to affect the provisions of the Solid Waste Disposal Act.

"(g) SMALL BUSINESS PARTICIPATION.—The Administrator shall ensure, to the maximum extent practicable, an adequate opportunity for small business participation in the program established by subsection (b).".

SEC. 210. POLLUTION LIABILITY INSURANCE.

CERCLA is amended by adding the following new title at the end thereof:

"TITLE IV—POLLUTION INSURANCE

"SEC. 401. DEFINITIONS.

"As used in this title—

"(1) INSURANCE.—The term 'insurance' means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

"(2) POLLUTION LIABILITY.—The term 'pollution liability' means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

"(3) RISK RETENTION GROUP.—The term 'risk retention group' means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

"(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

"(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

"(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

"(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

"(4) PURCHASING GROUP.—The term 'purchasing group' means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

"(5) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

"SEC. 402. STATE LAWS; SCOPE OF TITLE.

"(a) STATE LAWS.—Nothing in this title shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this title, including recognition or qualification of risk retention groups or purchasing groups.

"(b) SCOPE OF TITLE.—The authority to offer or to provide insurance under this title shall be limited to coverage of pollution liability risks and this title does not authorize a risk retention group or purchasing group to provide coverage of any other line of insurance.

"SEC. 403. RISK RETENTION GROUPS.

"(a) EXEMPTION.—Except as provided in this section, a risk retention group shall be exempt from the following:

"(1) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

"(2) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

"(3) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

"(4) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

"(b) EXCEPTIONS.—

"(1) STATE LAWS GENERALLY APPLICABLE.—Nothing in subsection (a) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

"(2) STATE REGULATIONS NOT SUBJECT TO EXEMPTION.—Subsection (a) shall not apply to any State law which requires a risk retention group to do any of the following:

"(A) Comply with the unfair claim settlement practices law of the State.

"(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

"(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

"(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

"(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

"(F) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

"(G) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

"(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

"(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

"(H) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (G).

"(c) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to—

"(1) pollution liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of pollution liability insurance coverage for a risk retention group; and

"(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

"(d) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not

impose any qualification or requirement which discriminates against a nonresident agent or broker.

"SEC. 404. PURCHASING GROUPS.

"(a) EXEMPTION.—Except as provided in this section, a purchasing group is exempt from the following:

"(1) A State law, rule, or order which prohibits the establishment of a purchasing group.

"(2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

"(3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

"(4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

"(5) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

"(6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

"(7) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

"(8) A State law, rule, or order which otherwise discriminate against a purchasing group or any of its members.

"(b) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to the following:

"(1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

"(A) a purchasing group; or

"(B) any person who is a member of a purchasing group.

"(2) The sale of any one of the following to a purchasing group or a member of the group:

"(A) Pollution liability insurance and comprehensive general liability coverage.

"(B) Insurance related services.

"(C) Management services.

"(c) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"SEC. 405. APPLICABILITY OF SECURITIES LAWS.

"(a) OWNERSHIP INTERESTS.—The ownership interests of members of a risk retention group shall be considered to be—

"(1) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

"(2) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

"(b) INVESTMENT COMPANY ACT.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

"(c) BLUE SKY LAW.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.".

SEC. 211. DEPARTMENT OF DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.

(a) IN GENERAL.—(1) Title 10, United States Code, is amended—

(A) by redesignating section 2701 as section 2721; and

(B) by inserting after chapter 159 the following new chapter:

"CHAPTER 160—ENVIRONMENTAL RESTORATION

"§2701. Environmental restoration program

"(a) ENVIRONMENTAL RESTORATION PROGRAM.—

"(1) IN GENERAL.—The Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the 'Defense Environmental Restoration Program'.

"(2) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the program described in subsection (b)(1) shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this chapter referred to as 'CERCLA') (42 U.S.C. 9601 et seq.).

"(3) CONSULTATION WITH EPA.—The program shall be carried out in consultation with the Administrator of the Environmental Protection Agency.

"(4) ADMINISTRATIVE OFFICE WITHIN OSD.—The Secretary shall identify an office within the Office of the Secretary which shall have responsibility for carrying out the program.

"(b) PROGRAM GOALS.—Goals of the program shall include the following:

"(1) The identification, investigation, research and development, and cleanup of contamination from hazardous substances, pollutants, and contaminants.

"(2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an im-

minent and substantial endangerment to the public health or welfare or to the environment.

"(3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

"(c) RESPONSIBILITY FOR RESPONSE ACTIONS.—

"(1) BASIC RESPONSIBILITY.—The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances from each of the following:

"(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary.

"(B) Each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances.

"(C) Each vessel owned or operated by the Department of Defense.

"(2) OTHER RESPONSIBLE PARTIES.—Paragraph (1) shall not apply to a removal or remedial action if the Administrator has provided for response action by a potentially responsible person in accordance with section 122 of CERCLA (relating to settlements).

"(3) STATE FEES AND CHARGES.—The Secretary shall pay fees and charges imposed by State authorities for permit services for the disposal of hazardous substances on lands which are under the jurisdiction of the Secretary to the same extent that nongovernmental entities are required to pay fees and charges imposed by State authorities for permit services. The preceding sentence shall not apply with respect to a payment that is the responsibility of a lessee, contractor, or other private person.

"(d) SERVICES OF OTHER AGENCIES.—The Secretary may enter into agreements on a reimbursable basis with any other Federal agency, and on a reimbursable or other basis with any State or local government agency, to obtain the services of that agency to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contamination possibly resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

"(e) RESPONSE ACTION CONTRACTORS.—The provisions of section 119 of CERCLA apply to response action contractors (as defined in that section) who carry out response actions under this section.

"§ 2702. Research, development, and demonstration program

"(a) PROGRAM.—As part of the Defense Environmental Restoration Program, the Secretary of Defense shall carry out a program of research, development, and demonstration with respect to hazardous wastes. The program shall be carried out in consultation and cooperation with the Administrator and the advisory council established under section 311(a)(5) of CERCLA. The program shall include re-

search, development, and demonstration with respect to each of the following:

"(1) Means of reducing the quantities of hazardous waste generated by activities and facilities under the jurisdiction of the Secretary.

"(2) Methods of treatment, disposal, and management (including recycling and detoxifying) of hazardous waste of the types and quantities generated by current and former activities of the Secretary and facilities currently and formerly under the jurisdiction of the Secretary.

"(3) Identifying more cost-effective technologies for cleanup of hazardous substances.

"(4) Toxicological data collection and methodology on risk of exposure to hazardous waste generated by the Department of Defense.

"(5) The testing, evaluation, and field demonstration of any innovative technology, processes, equipment, or related training devices which may contribute to establishment of new methods to control, contain, and treat hazardous substances, to be carried out in consultation and cooperation with, and to the extent possible in the same manner and standards as, testing, evaluation, and field demonstration carried out by the Administrator, acting through the office of technology demonstration of the Environmental Protection Agency.

"(b) SPECIAL PERMIT.—The Administrator may use the authorities of section 3005(g) of the Solid Waste Disposal Act (42 U.S.C. 6925(g)) to issue a permit for testing and evaluation which receives support under this section.

"(c) CONTRACTS AND GRANTS.—The Secretary may enter into contracts and cooperative agreements with, and make grants to, universities, public and private profit and nonprofit entities, and other persons to carry out the research, development, and demonstration authorized under this section. Such contracts may be entered into only to the extent that appropriated funds are available for that purpose.

"(d) INFORMATION COLLECTION AND DISSEMINATION.—

"(1) IN GENERAL.—The Secretary shall develop, collect, evaluate, and disseminate information related to the use (or potential use) of the treatment, disposal, and management technologies that are researched, developed, and demonstrated under this section.

"(2) ROLE OF EPA.—The functions of the Secretary under paragraph (1) shall be carried out in cooperation and consultation with the Administrator. To the extent appropriate and agreed upon by the Administrator and the Secretary, the Administrator shall evaluate and disseminate such information through the office of technology demonstration of the Environmental Protection Agency.

"§ 2703. Environmental restoration transfer account

"(a) ESTABLISHMENT OF TRANSFER ACCOUNT.—

"(1) ESTABLISHMENT.—There is hereby established in the Department of Defense an account to be known as the 'Defense Environmental Restoration Account' (hereinafter in this section re-

ferred to as the 'transfer account'). All sums appropriated to carry out the functions of the Secretary of Defense relating to environmental restoration under this chapter or any other provision of law shall be appropriated to the transfer account.

"(2) REQUIREMENT OF AUTHORIZATION OF APPROPRIATIONS.—No funds may be appropriated to the transfer account unless such sums have been specifically authorized by law.

"(3) AVAILABILITY OF FUNDS IN TRANSFER ACCOUNT.—Amounts appropriated to the transfer account shall remain available until transferred under subsection (b).

"(b) AUTHORITY TO TRANSFER TO OTHER DOD ACCOUNTS.—Amounts in the transfer account shall be available to be transferred by the Secretary to any appropriation account or fund of the Department for obligation from that account or fund. Funds so transferred shall be merged with and available for the same purposes and for the same period as the account or fund to which transferred.

"(c) OBLIGATION OF TRANSFERRED AMOUNTS.—Funds transferred under subsection (b) may only be obligated or expended from the account or fund to which transferred in order to carry out the functions of the Secretary under this chapter or environmental restoration functions under any other provision of law.

"(d) BUDGET REPORTS.—In proposing the Budget for any fiscal year pursuant to section 1105 of title 31, the President shall set forth separately the amount requested for environmental restoration programs of the Department of Defense under this chapter or any other Act.

"(e) AMOUNTS RECOVERED UNDER CERCLA.—Amounts recovered under section 107 of CERCLA for response actions of the Secretary shall be credited to the transfer account.

"§ 2704. Commonly found unregulated hazardous substances

"(a) NOTICE TO HHS.—

"(1) IN GENERAL.—The Secretary of Defense shall notify the Secretary of Health and Human Services of the hazardous substances which the Secretary of Defense determines to be the most commonly found unregulated hazardous substances at facilities under the Secretary's jurisdiction. The notification shall be of not less than the 25 most widely used such substances.

"(2) DEFINITION.—In this subsection, the term 'unregulated hazardous substance' means a hazardous substance—

"(A) for which no standard, requirement, criteria, or limitation is in effect under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, or the Clean Water Act; and

"(B) for which no water quality criteria are in effect under any provision of the Clean Water Act.

"(b) TOXICOLOGICAL PROFILES.—The Secretary of Health and Human Services shall take such steps as necessary to ensure the timely preparation of toxicological profiles of each of the substances of which the Secretary is notified under subsection (a). The profiles of such substances shall include each of the following:

"(1) The examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of signifi-

cant human exposure for the substance and the associated acute, subacute, and chronic health effects.

"(2) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

"(3) Where appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

"(c) DOD SUPPORT.—The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary (1) for the preparation of toxicological profiles under subsection (b) or (2) for other health related activities under section 104(i) of CERCLA. The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

"(d) EPA HEALTH ADVISORIES.—

"(1) PREPARATION.—At the request of the Secretary of Defense, the Administrator shall, in a timely manner, prepare health advisories on hazardous substances. Such an advisory shall be prepared on each hazardous substance—

"(A) for which no advisory exists;

"(B) which is found to threaten drinking water; and

"(C) which is emanating from a facility under the jurisdiction of the Secretary.

"(2) CONTENT OF HEALTH ADVISORIES.—Such health advisories shall provide specific advice on the levels of contaminants in drinking water at which adverse health effects would not be anticipated and which include a margin of safety so as to protect the most sensitive members of the population at risk. The advisories shall provide data on one-day, 10-day, and longer-term exposure periods where available toxicological data exist.

"(3) DOD SUPPORT FOR HEALTH ADVISORIES.—The Secretary of Defense shall transfer to the Administrator such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such health advisories. The Secretary and the Administrator shall enter into a memorandum of understanding regarding the manner in which this subsection shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this subsection.

"(e) CROSS REFERENCE.—Section 104(i) of CERCLA applies to facilities under the jurisdiction of the Secretary of Defense in the manner prescribed in that section.

"(f) FUNCTIONS OF HHS TO BE CARRIED OUT THROUGH ATSDR.—The functions of the Secretary of Health and Human Services under this section shall be carried out through the Administrator of the Agency of Toxic Substances and Disease Registry of the Department

of Health and Human Services established under section 104(i) of CERCLA.

"§ 2705. Notice of environmental restoration activities

"(a) EXPEDITED NOTICE.—The Secretary of Defense shall take such actions as necessary to ensure that the regional offices of the Environmental Protection Agency and appropriate State and local authorities for the State in which a facility under the Secretary's jurisdiction is located receive prompt notice of each of the following:

"(1) The discovery of releases or threatened releases of hazardous substances at the facility.

"(2) The extent of the threat to public health and the environment which may be associated with any such release or threatened release.

"(3) Proposals made by the Secretary to carry out response actions with respect to any such release or threatened release.

"(4) The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

"(b) COMMENT BY EPA AND STATE AND LOCAL AUTHORITIES.—

"(1) RELEASE NOTICES.—The Secretary shall ensure that the Administrator of the Environmental Protection Agency and appropriate State and local officials have an adequate opportunity to comment on notices under paragraphs (1) and (2) of subsection (a).

"(2) PROPOSALS FOR RESPONSE ACTIONS.—The Secretary shall require that an adequate opportunity for timely review and comment be afforded to the Administrator and to appropriate State and local officials after making a proposal referred to in subsection (a)(3) and before undertaking an activity or action referred to in subsection (a)(4). The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

"(c) TECHNICAL REVIEW COMMITTEE.—Whenever possible and practical, the Secretary shall establish a technical review committee to review and comment on Department of Defense actions and proposed actions with respect to releases or threatened releases of hazardous substances at installations. Members of any such committee shall include at least one representative of the Secretary, the Administrator, and appropriate State and local authorities and shall include a public representative of the community involved.

"§ 2706. Annual report to Congress

"(a) REPORT ON PROGRESS IN IMPLEMENTATION.—The Secretary of Defense shall submit to Congress a report each fiscal year describing the progress made by the Secretary during the preceding fiscal year in implementing the requirements of this chapter.

"(b) MATTERS TO BE INCLUDED.—Each such report shall include the following:

"(1) A statement for each installation under the jurisdiction of the Secretary of the number of individual facilities at which a hazardous substance has been identified.

"(2) The status of response actions contemplated or undertaken at each such facility.

"(3) The specific cost estimates and budgetary proposals involving response actions contemplated or undertaken at each such facility.

"(4) A report on progress on conducting response actions at facilities other than facilities on the National Priorities List.

"§ 2707. Definitions

"In this chapter:

"(1) The terms 'environment', 'facility', 'hazardous substance', 'person', 'release', 'removal', 'response', 'disposal', and 'hazardous waste' have the meanings given those terms in section 101 of CERCLA (42 U.S.C. 9601).

"(2) The term 'Administrator' means the Administrator of the Environmental Protection Agency.".

(2) The tables of chapters at the beginning of subtitle A, and at the beginning of part IV of subtitle A, of such title are each amended by inserting after the item relating to chapter 159 the following new item:

"160. Environmental Restoration ..... 2701".

(3) The table of sections at the beginning of chapter 161 of such title is amended to reflect the redesignation made by paragraph (1)(A).

(b) MILITARY CONSTRUCTION PROJECTS.—(1) Chapter 169 of title 10, United States Code, is amended by inserting at the end of subchapter I the following new section:

"§ 2810. Construction projects for environmental response actions

"(a) Subject to subsection (b), the Secretary of Defense may carry out a military construction project not otherwise authorized by law (or may authorize the Secretary of a military department to carry out such a project) if the Secretary of Defense determines that the project is necessary to carry out a response action under chapter 160 of this title or under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

"(b)(1) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include—

"(A) the justification for the project and the current estimate of the cost of the project; and

"(B) the justification for carrying out the project under this section.

"(2) The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

"(c) In this section, the term 'response action' has the meaning given that term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)."

(2) The table of sections at the beginning of subchapter I of such chapter is amended by adding at the end thereof the following new item:

"2810. Construction projects for environmental response actions.".

(c) EFFECTIVE DATE.—Section 2703(a)(2) of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1986.

SEC. 212. REPORT AND OVERSIGHT REQUIREMENTS.

Section 301 of CERCLA is amended by adding at the end thereof the following new subsection:

"(h) REPORT AND OVERSIGHT REQUIREMENTS.—

"(1) ANNUAL REPORT BY EPA.—On January 1 of each year the Administrator of the Environmental Protection Agency shall submit an annual report to Congress of such Agency on the progress achieved in implementing this Act during the preceding fiscal year. In addition such report shall specifically include each of the following:

"(A) A detailed description of each feasibility study carried out at a facility under title I of this Act.

"(B) The status and estimated date of completion of each such study.

"(C) Notice of each such study which will not meet a previously published schedule for completion and the new estimated date for completion.

"(D) An evaluation of newly developed feasible and achievable permanent treatment technologies.

"(E) Progress made in reducing the number of facilities subject to review under section 121(c).

"(F) A report on the status of all remedial and enforcement actions undertaken during the prior fiscal year, including a comparison to remedial and enforcement actions undertaken in prior fiscal years.

"(G) An estimate of the amount of resources, including the number of work years or personnel, which would be necessary for each department, agency, or instrumentality which is carrying out any activities of this Act to complete the implementation of all duties vested in the department, agency, or instrumentality under this Act.

"(2) REVIEW BY INSPECTOR GENERAL.—Consistent with the authorities of the Inspector General Act of 1978 the Inspector General of the Environmental Protection Agency shall review any report submitted under paragraph (1) related to EPA's activities for reasonableness and accuracy and submit to Congress, as a part of such report a report on the results of such review.

"(3) CONGRESSIONAL OVERSIGHT.—After receiving the reports under paragraphs (1) and (2) of this subsection in any calendar year, the appropriate authorizing committees of Congress shall conduct oversight hearings to ensure that this Act is being implemented according to the purposes of this Act and congressional inient in enacting this Act.".

SEC. 213. LOVE CANAL PROPERTY ACQUISITION.

(a) CONGRESSIONAL FINDINGS.—

(1) The area known as Love Canal located in the city of Niagara Falls and the town of Wheatfield, New York, was the first toxic waste site to receive national attention. As a result of that attention Congress investigated the problems associated with toxic waste sites and enacted CERCLA to deal with these problems.

(2) Because Love Canal came to the Nation's attention prior to the passage of CERCLA and because the fund under CERCLA was not available to compensate for all of the hardships endured by the citizens in the area, Congress has determined that special provisions are required. These provisions do not affect the lawfulness, implementation, or selection of any other response actions at Love Canal or at any other facilities.

(b) AMENDMENT OF SUPERFUND.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 312. LOVE CANAL PROPERTY ACQUISITION.

"(a) ACQUISITION OF PROPERTY IN EMERGENCY DECLARATION AREA.—The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') may make grants not to exceed $2,500,000 to the State of New York (or to any duly constituted public agency or authority thereof) for purposes of acquisition of private property in the Love Canal Emergency Declaration Area. Such acquisition shall include (but shall not be limited to) all private property within the Emergency Declaration Area, including non-owner occupied residential properties, commercial, industrial, public, religious, non-profit, and vacant properties.

"(b) PROCEDURES FOR ACQUISITION.—No property shall be acquired pursuant to this section unless the property owner voluntarily agrees to such acquisition. Compensation for any property acquired pursuant to this section shall be based upon the fair market value of the property as it existed prior to the emergency declaration. Valuation procedures for property acquired with funds provided under this section shall be in accordance with those set forth in the agreement entered into between the New York State Disaster Preparedness Commission and the Love Canal Revitalization Agency on October 9, 1980.

"(c) STATE OWNERSHIP.—The Administrator shall not provide any funds under this section for the acquisition of any properties pursuant to this section unless a public agency or authority of the State of New York first enters into a cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State or an agency created under the laws of the State shall take title to the properties to be so acquired.

"(d) MAINTENANCE OF PROPERTY.—The Administrator shall enter into a cooperative agreement with an appropriate public agency or authority of the State of New York under which the Administrator shall maintain or arrange for the maintenance of all properties within the Emergency Declaration Area that have been acquired by any public agency or authority of the State. Ninety (90) percent of the costs of such maintenance shall be paid by the Administrator. The remaining portion of such costs shall be paid by the State (unless a credit is available under section 104(c)). The Administrator is authorized, in his discretion, to provide technical assistance to

any public agency or authority of the State of New York in order to implement the recommendations of the habitability and land-use study in order to put the land within the Emergency Declaration Area to its best use.

"(e) HABITABILITY AND LAND USE STUDY.—The Administrator shall conduct or cause to be conducted a habitability and land-use study. The study shall—

"(1) assess the risks associated with inhabiting of the Love Canal Emergency Declaration Area;

"(2) compare the level of hazardous waste contamination in that Area to that present in other comparable communities; and

"(3) assess the potential uses of the land within the Emergency Declaration Area, including but not limited to residential, industrial, commercial and recreational, and the risks associated with such potential uses.

The Administrator shall publish the findings of such study and shall work with the State of New York to develop recommendations based upon the results of such study.

"(f) FUNDING.—For purposes of section 111 ***[and 221(c) of this Act]****, the expenditures authorized by this section shall be treated as a cost specified in section 111(c).*

"(g) RESPONSE.—The provisions of this section shall not affect the implementation of other response actions within the Emergency Declaration Area that the Administrator has determined (before enactment of this section) to be necessary to protect the public health or welfare or the environment.

"(h) DEFINITIONS.—For purposes of this section:

"(1) EMERGENCY DECLARATION AREA.—The terms 'Emergency Declaration Area' and 'Love Canal Emergency Declaration Area' mean the Emergency Declaration Area as defined in section 950, paragraph (2) of the General Municipal Law of the State of New York, Chapter 259, Laws of 1980, as in effect on the date of the enactment of this section.

"(2) PRIVATE PROPERTY.—As used in subsection (a), the term 'private property' means all property which is not owned by a department, agency, or instrumentality of—

"(A) the United States, or

"(B) the State of New York (or any public agency or authority thereof).".

TITLE III—EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

SEC. 300. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Emergency Planning and Community Right-To-Know Act of 1986".

(b) TABLE OF CONTENTS.—The table of contents of this title is as follows:

Subtitle A—Emergency Planning and Notification

SEC. 301. ESTABLISHMENT OF STATE COMMISSIONS, PLANNING DISTRICTS, AND LOCAL COMMITTEES.

(a) ESTABLISHMENT OF STATE EMERGENCY RESPONSE COMMISSIONS.—Not later than six months after the date of the enactment of this title, the Governor of each State shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the State emergency response commission who have technical expertise in the emergency response field. The State emergency response commission shall appoint local emergency planning committees under subsection (c) and shall supervise and coordinate the activities of such committees. The State emergency response commission shall establish procedures for receiving and processing requests from the public for information under section 324, including tier II information under section 312. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a State emergency response commission within such period, the Governor shall operate as the State emergency response commission until the Governor makes such designation.

(b) ESTABLISHMENT OF EMERGENCY PLANNING DISTRICTS.—Not later than nine months after the date of the enactment of this title, the State emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multijurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the State emergency response commissions of all potentially affected States may designate emergency planning districts and local emergency planning committees by agreement. In making such designation, the State emergency response commission shall indicate which facilities subject to the requirements of this subtitle are within such emergency planning district.

(c) ESTABLISHMENT OF LOCAL EMERGENCY PLANNING COMMITTEES.—Not later than 30 days after designation of emergency planning districts or 10 months after the date of the enactment of this title, whichever is earlier, the State emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subtitle. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under section 324, including tier II information under section 312. Such procedures shall include the designation of an official to serve as coordinator for information.

(d) REVISIONS.—A State emergency response commission may revise its designations and appointments under subsections (b) and (c) as it deems appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee.

SEC. 302. SUBSTANCES AND FACILITIES COVERED AND NOTIFICATION.

(a) SUBSTANCES COVERED.—

(1) IN GENERAL.—A substance is subject to the requirements of this subtitle if the substance is on the list published under paragraph (2).

(2) LIST OF EXTREMELY HAZARDOUS SUBSTANCES.—Within 30 days after the date of the enactment of this title, the Administrator shall publish a list of extremely hazardous substances. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance".

(3) THRESHOLDS.—(A) At the time the list referred to in paragraph (2) is published the Administrator shall—

(i) publish an interim final regulation establishing a threshold planning quantity for each substance on the list, taking into account the criteria described in paragraph (4), and

(ii) initiate a rulemaking in order to publish final regulations establishing a threshold planning quantity for each substance on the list.

(B) The threshold planning quantities may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(C) If the Administrator fails to publish an interim final regulation establishing a threshold planning quantity for a sub-

stance within 30 days after the date of the enactment of this title, the threshold planning quantity for the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for the substance.

(4) REVISIONS.—The Administrator may revise the list and thresholds under paragraphs (2) and (3) from time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance. For purposes of the preceding sentence, the term "toxicity" shall include any short- or long-term health effect which may result from a short-term exposure to the substance.

(b) FACILITIES COVERED.—(1) Except as provided in section 304, a facility is subject to the requirements of this subtitle if a substance on the list referred to in subsection (a) is present at the facility in an amount in excess of the threshold planning quantity established for such substance.

(2) For purposes of emergency planning, a Governor or a State emergency response commission may designate additional facilities which shall be subject to the requirements of this subtitle, if such designation is made after public notice and opportunity for comment. The Governor or State emergency response commission shall notify the facility concerned of any facility designation under this paragraph.

(c) EMERGENCY PLANNING NOTIFICATION.—Not later than seven months after the date of the enactment of this title, the owner or operator of each facility subject to the requirements of this subtitle by reason of subsection (b)(1) shall notify the State emergency response commission for the State in which such facility is located that such facility is subject to the requirements of this subtitle. Thereafter, if a substance on the list of extremely hazardous substances referred to in subsection (a) first becomes present at such facility in excess of the threshold planning quantity established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the State emergency response commission and the local emergency planning committee within 60 days after such acquisition or revision that such facility is subject to the requirements of this subtitle.

(d) NOTIFICATION OF ADMINISTRATOR.—The State emergency response commission shall notify the Administrator of facilities subject to the requirements of this subtitle by notifying the Administrator of—

(1) each notification received from a facility under subsection (c), and

(2) each facility designated by the Governor or State emergency response commission under subsection (b)(2).

SEC. 303. COMPREHENSIVE EMERGENCY RESPONSE PLANS.

(a) PLAN REQUIRED.—Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after the date of the enactment of this title. The committee shall review such plan once a year, or

more frequently as changed circumstances in the community or at any facility may require.

(b) RESOURCES.—Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.

(c) PLAN PROVISIONS.—Each emergency plan shall include (but is not limited to) each of the following:

(1) Identification of facilities subject to the requirements of this subtitle that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 302(a), and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subtitle, such as hospitals or natural gas facilities.

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 304).

(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subtitle, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

(d) PROVIDING OF INFORMATION.—For each facility subject to the requirements of this subtitle:

(1) Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after the date of the enactment of this title, whichever is earlier, the owner or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

(3) Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

(e) REVIEW BY THE STATE EMERGENCY RESPONSE COMMISSION.—After completion of an emergency plan under subsection (a) for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

(f) GUIDANCE DOCUMENTS.—The national response team, as established pursuant to the National Contingency Plan as established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after the date of the enactment of this title.

(g) REVIEW OF PLANS BY REGIONAL RESPONSE TEAMS.—The regional response teams, as established pursuant to the National Contingency Plan as established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review shall not delay implementation of the plan.

SEC. 304. EMERGENCY NOTIFICATION.

(a) TYPES OF RELEASES.—

(1) 302(a) SUBSTANCE WHICH REQUIRES CERCLA NOTICE.—If a release of an extremely hazardous substance referred to in section 302(a) occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereafter in this section referred to as "CERCLA") (42 U.S.C. 9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b).

(2) OTHER 302(a) SUBSTANCE.—If a release of an extremely hazardous substance referred to in section 302(a) occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA, the owner or operator of the facility shall immediately provide notice as described in subsection (b), but only if the release—

(A) is not a federally permitted release as defined in section 101(10) of CERCLA,

(B) is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and

(C) occurs in a manner which would require notification under section 103(a) of CERCLA.

Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b).

(3) NON-302(a) SUBSTANCE WHICH REQUIRES CERCLA NOTICE.—If a release of a substance which is not on the list referred to in section 302(a) occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA, the owner or operator shall provide notice as follows:

(A) If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA, the owner or operator shall provide notice as described in subsection (b).

(B) If the substance is one for which a reportable quantity has not been established under section 102(a) of CERLCA—

(i) Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA.

(ii) On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b).

(4) EXEMPTED RELEASES.—This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

(b) NOTIFICATION.—

(1) RECIPIENTS OF NOTICE.—Notice required under subsection (a) shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committees, if established pursuant to section 301(c), for any area likely to be affected by the release and to the State emergency planning commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(2) CONTENTS.—Notice required under subsection (a) shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

(A) The chemical name or identity of any substance involved in the release.

(B) An indication of whether the substance is on the list referred to in section 302(a).

(C) An estimate of the quantity of any such substance that was released into the environment.

(D) The time and duration of the release.

(E) The medium or media into which the release occurred.

(F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(G) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(H) The name and telephone number of the person or persons to be contacted for further information.

(c) FOLLOWUP EMERGENCY NOTICE.—As soon as practicable after a release which requires notice under subsection (a), such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b), and including additional information with respect to—

(1) actions taken to respond to and contain the release,

(2) any known or anticipated acute or chronic health risks associated with the release, and

(3) where appropriate, advice regarding medical attention necessary for exposed individuals.

(d) TRANSPORTATION EXEMPTION NOT APPLICABLE.—The exemption provided in section 327 (relating to transportation) does not apply to this section.

SEC. 305. EMERGENCY TRAINING AND REVIEW OF EMERGENCY SYSTEMS.

(a) EMERGENCY TRAINING.—

(1) PROGRAMS.—Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) STATE AND LOCAL PROGRAM SUPPORT.—There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1987, 1988, 1989, and 1990, $5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The re-

maining 20 percent of such costs shall be funded from non-Federal sources.

(3) OTHER PROGRAMS.—Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) REVIEW OF EMERGENCY SYSTEMS.—

(1) REVIEW.—The Administrator shall initiate, not later than 30 days after the date of the enactment of this title, a review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances from the substances on the list referred to in section 302(a) for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after such date of enactment, and issue a final report of findings and recommendations to the Congress not later than 18 months after such date of enactment. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

(2) REPORT.—The report required by this subsection shall include the Administrator's findings regarding each of the following:

(A) The status of current technological capabilities to (i) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances, (ii) determine the magnitude and direction of the hazard posed by each release, (iii) identify specific substances, (iv) provide data on the specific chemical composition of such releases, and (v) determine the relative concentrations of the constituent substances.

(B) The status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances into the environment, including releases into the atmosphere, surface water, or groundwater from facilities that produce, store, or use significant quantities of such extremely hazardous substances.

(C) The technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

(3) RECOMMENDATIONS.—The report required by this subsection shall also include the Administrator's recommendations for—

(A) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

(B) improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances.

Subtitle B—Reporting Requirements

SEC. 311. MATERIAL SAFETY DATA SHEETS.

(a) BASIC REQUIREMENT.—

(1) SUBMISSION OF MSDS OR LIST.—The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act (15 U.S.C. 651 et seq.) shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) CONTENTS OF LIST.—(A) The list of chemicals referred to in paragraph (1) shall include each of the following:

(i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).

(ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.

(iii) Any hazardous component of each such chemical as provided on the material safety data sheet.

(B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) TREATMENT OF MIXTURES.—An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.

(B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.

(b) THRESHOLDS.—The Administrator may establish threshold quantities for hazardous chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities

may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) AVAILABILITY OF MSDS ON REQUEST.—

(1) TO LOCAL EMERGENCY PLANNING COMMITTEE.—If an owner or operator of a facility submits a list of chemicals under subsection (a)(1), the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.

(2) TO PUBLIC.—A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 324. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 324.

(d) INITIAL SUBMISSION AND UPDATING.—(1) The initial material safety data sheet or list required under this section with respect to a hazardous chemical shall be provided before the later of—

(A) 12 months after the date of the enactment of this title, or

(B) 3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a), a revised sheet shall be provided to such person.

(e) HAZARDOUS CHEMICAL DEFINED.—For purposes of this section, the term "hazardous chemical" has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Federal Regulations, except that such term does not include the following:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

SEC. 312. EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORMS.

(a) BASIC REQUIREMENT.—(1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall prepare and submit an emergency and hazardous chemi-

cal inventory form (hereafter in this title referred to as an "inventory form") to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) The inventory form containing tier I information (as described in subsection (d)(1)) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year. The preceding sentence does not apply if an owner or operator provides, by the same deadline and with respect to the same calendar year, tier II information (as described in subsection (d)(2)) to the recipients described in paragraph (1).

(3) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Providing information on the inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.

(B) Providing information on the inventory form on the mixture itself.

(b) THRESHOLDS.—The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) HAZARDOUS CHEMICALS COVERED.—A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under section 311.

(d) CONTENTS OF FORM.—

(1) TIER I INFORMATION.—

(A) AGGREGATE INFORMATION BY CATEGORY.—An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(B) REQUIRED INFORMATION.—The information referred to in subparagraph (A) is the following:

(i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.

(ii) An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.

(iii) The general location of hazardous chemicals in each category.

(C) MODIFICATIONS.—For purposes of reporting information under this paragraph, the Administrator may—

(i) modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or

(ii) require reporting on individual hazardous chemicals of special concern to emergency response personnel.

(2) TIER II INFORMATION.—An inventory form shall provide the following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e):

(A) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(B) An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(C) An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

(D) A brief description of the manner of storage of the hazardous chemical.

(E) The location at the facility of the hazardous chemical.

(F) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 324.

(e) AVAILABILITY OF TIER II INFORMATION.—

(1) AVAILABILITY TO STATE COMMISSIONS, LOCAL COMMITTEES, AND FIRE DEPARTMENTS.—Upon request by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d), to the person making the request. Any such request shall be with respect to a specific facility.

(2) AVAILABILITY TO OTHER STATE AND LOCAL OFFICIALS.—A State or local official acting in his or her official capacity may have access to tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.

(3) AVAILABILITY TO PUBLIC.—

(A) IN GENERAL.—Any person may request a State emergency response commission or local emergency planning committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(B) AUTOMATIC PROVISION OF INFORMATION TO PUBLIC.—Any tier II information which a State emergency response commission or local emergency planning committee has in

its possession shall be made available to a person making a request under this paragraph in accordance with section 324. If the State emergency response commission or local emergency planning committee does not have the tier II information in its possession, upon a request for tier II information the State emergency response commission or local emergency planning committee shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 324 to the person making the request.

(C) DISCRETIONARY PROVISION OF INFORMATION TO PUBLIC.—In the case of tier II information which is not in the possession of a State emergency response commission or local emergency planning committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The State emergency response commission or local emergency planning committee may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the State emergency response commission or local emergency planning committee shall make the information available in accordance with section 324 to the person.

(D) RESPONSE IN 45 DAYS.—A State emergency response commission or local emergency planning committee shall respond to a request for tier II information under this paragraph no later than 45 days after the date of receipt of the request.

(f) FIRE DEPARTMENT ACCESS.—Upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

(g) FORMAT OF FORMS.—The Administrator shall publish a uniform format for inventory forms within three months after the date of the enactment of this title. If the Administrator does not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter.

SEC. 313. TOXIC CHEMICAL RELEASE FORMS.

(a) BASIC REQUIREMENT.—The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) for each toxic chemical listed under subsection (c) that was manufactured, proc-

essed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

(b) COVERED OWNERS AND OPERATORS OF FACILITIES.—

(1) IN GENERAL.—(A) The requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) in excess of the quantity of that toxic chemical established under subsection (f) during the calendar year for which a release form is required under this section.

(B) The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of this section.

(C) For purposes of this section—

(i) The term "manufacture" means to produce, prepare, import, or compound a toxic chemical.

(ii) The term "process" means the preparation of a toxic chemical, after its manufacture, for distribution in commerce—

(I) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such chemcial, or

(II) as part of an article containing the toxic chemical.

(2) DISCRETIONARY APPLICATION TO ADDITIONAL FACILITIES.—The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

(c) TOXIC CHEMICALS COVERED.—The toxic chemicals subject to the requirements of this section are those chemicals on the list in Committee Print Number 99-169 of the Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986" (including any revised version of the list as may be made pursuant to subsection (d) or (e)).

(d) REVISIONS BY ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator may by rule add or delete a chemical from the list described in subsection (c) at any time.

(2) ADDITIONS.—A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of—

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section. The number of chemicals included on the list described in subsection (c) on the basis of the preceding sentence may constitute in the aggregate no more than 25 percent of the total number of chemicals on the list.

A determination under this paragraph shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.

(3) DELETIONS.—A chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph (2).

(4) EFFECTIVE DATE.—Any revision made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calender year shall take effect beginning with the calendar year following such next calendar year.

(e) PETITIONS.—

(1) IN GENERAL.—Any person may petition the Administrator to add or delete a chemical from the list described in subsection (c) on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2). Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

(A) Initiate a rulemaking to add or delete the chemical to the list, in accordance with subsection (d)(2) or (d)(3).

(B) Publish an explanation of why the petition is denied.

(2) GOVERNOR PETITIONS.—A State Governor may petition the Administrator to add or delete a chemical from the list described in subsection (c) on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d)(2). In the case of such a petition from a State Governor to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (1) to delete a chemical. In the case of such a petition from a State Governor to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator—

(A) initiates a rulemaking to add the chemical to the list, in accordance with subsection (d)(2), or

(B) publishes an explanation of why the Administrator believes the petition does not meet the requirements of subsection (d)(2) for adding a chemical to the list.

(f) THRESHOLD FOR REPORTING.—

(1) TOXIC CHEMICAL THRESHOLD AMOUNT.—The threshold amounts for purposes of reporting toxic chemicals under this section are as follows:

(A) With respect to a toxic chemical used at a facility, 10,000 pounds of the toxic chemical per year.

(B) With respect to a toxic chemical manufactured or processed at a facility—

(i) For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, 75,000 pounds of the toxic chemical per year.

(ii) For the form required to be submitted on or before July 1, 1989, 50,000 pounds of the toxic chemical per year.

(iii) For the form required to be submitted on or before July 1, 1990, and for each form thereafter, 25,000 pounds of the toxic chemical per year.

(2) REVISIONS.—The Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(g) FORM.—

(1) INFORMATION REQUIRED.—Not later than June 1, 1987, the Administrator shall publish a uniform toxic chemical release form for facilities covered by this section. If the Administrator does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this subsection by letter postmarked on or before the date on which the form is due. Such form shall—

(A) provide for the name and location of, and principal business activities at, the facility;

(B) include an appropriate certification, signed by a senior official with management responsibility for the

person or persons completing the report, regarding the accuracy and completeness of the report; and

(C) provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:

(i) Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical.

(ii) An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.

(iii) For each wastestream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that wastestream.

(iv) The annual quantity of the toxic chemical entering each environmental medium.

(2) USE OF AVAILABLE DATA.—In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation. In order to assure consistency, the Administrator shall require that data be expressed in common units.

(h) USE OF RELEASE FORM.—The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section 324(a), to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

(i) MODIFICATIONS IN REPORTING FREQUENCY.—

(1) IN GENERAL.—The Administrator may modify the frequency of submitting a report under this section, but the Administrator may not modify the frequency to be any more often than annually. A modification may apply, either nationally or in a specific geographic area, to the following:

(A) All toxic chemical release forms required under this section.

(B) A class of toxic chemicals or a category of facilities.

(C) A specific toxic chemical.

(D) A specific facility.

(2) REQUIREMENTS.—A modification may be made under paragraph (1) only if the Administrator—

(A) makes a finding that the modification is consistent with the provisions of subsection (h), based on—

(i) experience from previously submitted toxic chemical release forms, and

(ii) determinations made under paragraph (3), and

(B) the finding is made by a rulemaking in accordance with section 553 of title 5, United States Code.

(3) DETERMINATIONS.—The Administrator shall make the following determinations with respect to a proposed modification before making a modification under paragraph (1):

(A) The extent to which information relating to the proposed modification provided on the toxic chemical release forms has been used by the Administrator or other agencies of the Federal Government, States, local governments, health professionals, and the public.

(B) The extent to which the information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through a State program.

(C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

(4) 5-YEAR REVIEW.—Any modification made under this subsection shall be reviewed at least once every 5 years. Such review shall examine the modification and ensure that the requirements of paragraphs (2) and (3) still justify continuation of the modification. Any change to a modification reviewed under this paragraph shall be made in accordance with this subsection.

(5) NOTIFICATION TO CONGRESS.—The Administrator shall notify Congress of an intention to initiate a rulemaking for a modification under this subsection. After such notification, the Administrator shall delay initiation of the rulemaking for at least 12 months, but no more than 24 months, after the date of such notification.

(6) JUDICIAL REVIEW.—In any judicial review of a rulemaking which establishes a modification under this subsection, a court may hold unlawful and set aside agency action, findings, and conclusions found to be unsupported by substantial evidence.

(7) APPLICABILITY.—A modification under this subsection may apply to a calendar year or other reporting period beginning no earlier than January 1, 1993.

(8) EFFECTIVE DATE.—Any modification made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any modification made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(j) EPA MANAGEMENT OF DATA.—The Administrator shall establish and maintain in a computer data base a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.

(k) REPORT.—Not later than June 30, 1991, the Comptroller General, in consultation with the Administrator and appropriate officials in the States, shall submit to the Congress a report including each of the following:

(1) A description of the steps taken by the Administrator and the States to implement the requirements of this section, including steps taken to make information collected under this section available to and accessible by the public.

(2) A description of the extent to which the information collected under this section has been used by the Environmental Protection Agency, other Federal agencies, the States, and the public, and the purposes for which the information has been used.

(3) An identification and evaluation of options for modifications to the requirements of this section for the purpose of making information collected under this section more useful.

(l) MASS BALANCE STUDY.—

(1) IN GENERAL.—The Administrator shall arrange for a mass balance study to be carried out by the National Academy of Sciences using mass balance information collected by the Administrator under paragraph (3). The Administrator shall submit to Congress a report on such study no later than 5 years after the date of the enactment of this title.

(2) PURPOSES.—The purposes of the study are as follows:

(A) To assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases.

(B) To assess the value of obtaining mass balance information, or portions thereof, to determine the waste reduction efficiency of different facilities, or categories of facilities, including the effectiveness of toxic chemical regulations promulgated under laws other than this title.

(C) To assess the utility of such information for evaluating toxic chemical management practices at facilities, or categories of facilities, covered by this section.

(D) To determine the implications of mass balance information collection on a national scale similar to the mass balance information collection carried out by the Administrator under paragraph (3), including implications of the use of such collection as part of a national annual quantity toxic chemical release program.

(3) INFORMATION COLLECTION.—(A) The Administrator shall acquire available mass balance information from States which currently conduct (or during the 5 years after the date of enactment of this title initiate) a mass balance-oriented annual quantity toxic chemical release program. If information from such States provides an inadequate representation of industry classes and categories to carry out the purposes of the study, the Administrator also may acquire mass balance information necessary for the study from a representative number of facilities in other States.

(B) Any information acquired under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a

particular part thereof) to which the Administrator or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, United States Code, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this section.

(C) The Administrator may promulgate regulations prescribing procedures for collecting mass balance information under this paragraph.

(D) For purposes of collecting mass balance information under subparagraph (A), the Administrator may require the submission of information by a State or facility.

(4) MASS BALANCE DEFINITION.—For purposes of this subsection, the term "mass balance" means an accumulation of the annual quantities of chemicals transported to a facility, produced at a facility, consumed at a facility, used at a facility, accumulated at a facility, released from a facility, and transported from a facility as a waste or as a commercial product or byproduct or component of a commercial product or byproduct.

Subtitle C—General Provisions

SEC. 321. RELATIONSHIP TO OTHER LAW.

(a) IN GENERAL.—Nothing in this title shall—

(1) preempt any State or local law,

(2) except as provided in subsection (b), otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law, or

(3) affect or modify in any way the obligations or liabilities of any person under other Federal law.

(b) EFFECT ON MSDS REQUIREMENTS.—Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 311. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet (including information on the location and quantity of hazardous chemicals present at the facility), through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

SEC. 322. TRADE SECRETS.

(a) AUTHORITY TO WITHHOLD INFORMATION.—

(1) GENERAL AUTHORITY.—(A) With regard to a hazardous chemical, an extremely hazardous substance, or a toxic chemical, any person required under section 303(d)(2), 303(d)(3), 311, 312, or 313 to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification), as defined in regulations prescribed by the Administrator under subsection (c), if the person complies with paragraph (2).

(B) Any person withholding the specific chemical identity shall, in the place on the submittal where the chemical identity would normally be included, include the generic class or category of the hazardous chemical, extremely hazardous substance, or toxic chemical (as the case may be).

(2) REQUIREMENTS.—(A) A person is entitled to withhold information under paragraph (1) if such person—

(i) claims that such information is a trade secret, on the basis of the factors enumerated in subsection (b),

(ii) includes in the submittal referred to in paragraph (1) an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (b), including a specific description of why such factors apply, and

(iii) submits to the Administrator a copy of such submittal, and the information withheld from such submittal.

(B) In submitting to the Administrator the information required by subparagraph (A)(iii), a person withholding information under this subsection may—

(i) designate, in writing and in such manner as the Administrator may prescribe by regulation, the information which such person believes is entitled to be withheld under paragraph (1), and

(ii) submit such designated information separately from other information submitted under this subsection.

(3) LIMITATION.—The authority under this subsection to withhold information shall not apply to information which the Administrator has determined, in accordance with subsection (c), is not a trade secret.

(b) TRADE SECRET FACTORS.—No person required to provide information under this title may claim that the information is entitled to protection as a trade secret under subsection (a) unless such person shows each of the following:

(1) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) The chemical identity is not readily discoverable through reverse engineering.

(c) TRADE SECRET REGULATIONS.—As soon as practicable after the date of enactment of this title, the Administrator shall prescribe regulations to implement this section. With respect to subsection (b)(4), such regulations shall be equivalent to comparable provisions in the Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200) and any revisions of

such standard prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in United Steelworkers of America, AFL-CIO-CLC v. Thorne G. Auchter.

(d) PETITION FOR REVIEW.—

(1) IN GENERAL.—Any person may petition the Administrator for the disclosure of the specific chemical identity of a hazardous chemical, an extremely hazardous substance, or a toxic chemical which is claimed as a trade secret under this section. The Administrator may, in the absence of a petition under this paragraph, initiate a determination, to be carried out in accordance with this subsection, as to whether information withheld constitutes a trade secret.

(2) INITIAL REVIEW.—Within 30 days after the date of receipt of a petition under paragraph (1) (or upon the Administrator's initiative), the Administrator shall review the explanation filed by a trade secret claimant under subsection (a)(2) and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the specific chemical identity is a trade secret.

(3) FINDING OF SUFFICIENT ASSERTIONS.—

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents sufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to supplement the explanation with detailed information to support the assertions.

(B) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are true and that the specific chemical identity is a trade secret, the Administrator shall so notify the petitioner and the petitioner may seek judicial review of the determination.

(C) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are not true and that the specific chemical identity is not a trade secret, the Administrator shall notify the trade secret claimant that the Administrator intends to release the specific chemical identity. The trade secret claimant has 30 days in which he may appeal the Administrator's determination under this subparagraph to the Administrator. If the Administrator does not reverse his determination under this subparagraph in such an appeal by the trade secret claimant, the trade secret claimaint may seek judicial review of the determination.

(4) FINDING OF INSUFFICIENT ASSERTIONS.—

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents insufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to appeal the determination to the Administrator, or, upon a showing of good

cause, amend the original explanation by providing supplementary assertions to support the trade secret claim.

(B) If the Administrator does not reverse his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the Administrator shall so notify the trade secret claimant and the trade secret claimant may seek judicial review of the determination.

(C) If the Administrator reverses his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the procedures under paragraph (3) of this subsection apply.

(e) EXCEPTION FOR INFORMATION PROVIDED TO HEALTH PROFESSIONALS.—Nothing in this section, or regulations adopted pursuant to this section, shall authorize any person to withhold information which is required to be provided to a health professional, a doctor, or a nurse in accordance with section 323.

(f) PROVIDING INFORMATION TO THE ADMINISTRATOR; AVAILABILITY TO PUBLIC.—Any information submitted to the Administrator under subsection (a)(2) or subsection (d)(3) (except a specific chemical identity) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, United States Code, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this title.

(g) INFORMATION PROVIDED TO STATE.—Upon request by a State, acting through the Governor of the State, the Administrator shall provide to the State any information obtained under subsection (a)(2) and subsection (d)(3).

(h) INFORMATION ON ADVERSE EFFECTS.—(1) In any case in which the identity of a hazardous chemical or an extremely hazardous substance is claimed as a trade secret, the Governor or State emergency response commission established under section 301 shall identify the adverse health effects associated with the hazardous chemical or extremely hazardous substance and shall assure that such information is provided to any person requesting information about such hazardous chemical or extremely hazardous substance.

(2) In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by section 313(j) and is provided to any person requesting information about such toxic chemical.

(i) INFORMATION PROVIDED TO CONGRESS.—Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this title shall be made available to a duly authorized committee of the Congress upon written request by such a committee.

SEC. 323. PROVISION OF INFORMATION TO HEALTH PROFESSIONALS, DOCTORS, AND NURSES.

(a) DIAGNOSIS OR TREATMENT BY HEALTH PROFESSIONAL.—An owner or operator of a facility which is subject to the requirements of section 311, 312, or 313 shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d). The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

(1) the information is needed for purposes of diagnosis or treatment of an individual,

(2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and

(3) knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(b) MEDICAL EMERGENCY.—An owner or operator of a facility which is subject to the requirements of section 311, 312, or 313 shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that—

(1) a medical emergency exists,

(2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment, and

(3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet, an inventory form, or a toxic chemical release form under section 322 when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) PREVENTIVE MEASURES BY LOCAL HEALTH PROFESSIONALS.—

(1) PROVISION OF INFORMATION.—An owner or operator of a facility subject to the requirements of section 311, 312, or 313 shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—

(A) who is a local government employee or a person under contract with the local government, and

(B) who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d).

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(2) WRITTEN STATEMENT OF NEED.—The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(B) To conduct or assess sampling to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

(F) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(d) CONFIDENTIALITY AGREEMENT.—Any person obtaining information under subsection (a) or (c) shall, in accordance with such subsection (a) or (c), be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

(e) REGULATIONS.—As soon as practicable after the date of the enactment of this title, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection (a) and (c) and the confidentiality agreement under subsection (d).

SEC. 324. PUBLIC AVAILABILITY OF PLANS, DATA SHEETS, FORMS, AND FOLLOWUP NOTICES.

(a) AVAILABILITY TO PUBLIC.—Each emergency response plan, material safety data sheet, list described in section 311(a)(2), inventory form, toxic chemical release form, and followup emergency notice

shall be made available to the general public, consistent with section 322, during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 312, the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 312(d)(2) to be contained in an inventory form as tier II information.

(b) NOTICE OF PUBLIC AVAILABILITY.—Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a).

SEC. 325. ENFORCEMENT.

(a) CIVIL PENALTIES FOR EMERGENCY PLANNING.—The Administrator may order a facility owner or operator (except an owner or operator of a facility designated under section 302(b)(2)) to comply with section 302(c) and section 303(d). The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

(b) CIVIL, ADMINISTRATIVE, AND CRIMINAL PENALTIES FOR EMERGENCY NOTIFICATION.—

(1) CLASS I ADMINISTRATIVE PENALTY.—(A) A civil penalty of not more than $25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section 304.

(B) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(C) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(2) CLASS II ADMINISTRATIVE PENALTY.—A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the Administrator in the case of a violation of the requirements of section 304. In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and

collected under section 16 of the Toxic Substances Control Act. In any proceeding for the assessment of a civil penalty under this subsection the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

(3) JUDICIAL ASSESSMENT.—The Administrator may bring an action in the United States District court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section 304. In the case of a second or subsequent violation, the amount of such penalty may be not more than $75,000 for each day during which the violation continues.

(4) CRIMINAL PENALTIES.—Any person who knowingly and willfully fails to provide notice in accordance with section 304 shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five years, or both).

(c) CIVIL AND ADMINISTRATIVE PENALTIES FOR REPORTING REQUIREMENTS.—(1) Any person (other than a governmental entity) who violates any requirement of section 312 or 313 shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation.

(2) Any person (other than a governmental entity) who violates any requirement of section 311 or 323(b), and any person who fails to furnish to the Administrator information required under section 322(a)(2) shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

(3) Each day a violation described in paragraph (1) or (2) continues shall, for purposes of this subsection, constitute a separate violation.

(4) The Administrator may assess any civil penalty for which a person is liable under this subsection by administrative order or may bring an action to assess and collect the penalty in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(d) CIVIL, ADMINISTRATIVE, AND CRIMINAL PENALTIES WITH RESPECT TO TRADE SECRETS.—

(1) CIVIL AND ADMINISTRATIVE PENALTY FOR FRIVOLOUS CLAIMS.—If the Administrator determines—

(A)(i) under section 322(d)(4) that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or (ii) after receiving supplemental supporting detailed information under section 322(d)(3)(A), that the specific chemical identity is not a trade secret; and

(B) that the trade secret claim is frivolous,

the trade secret claimant is liable for a penalty of $25,000 per claim. The Administrator may assess the penalty by administrative order or may bring an action in the appropriate district court of the United States to assess and collect the penalty.

(2) CRIMINAL PENALTY FOR DISCLOSURE OF TRADE SECRET INFORMATION.—Any person who knowingly and willfully divulges or discloses any information entitled to protection under section 322 shall, upon conviction, be subject to a fine of not more than $20,000 or to imprisonment not to exceed one year, or both.

(e) SPECIAL ENFORCEMENT PROVISIONS FOR SECTION 323.—Whenever any facility owner or operator required to provide information under section 323 to a health professional who has requested such information fails or refuses to provide such information in accordance with such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 323.

(f) PROCEDURES FOR ADMINISTRATIVE PENALTIES.—

(1) Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(2) The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

SEC. 326. CIVIL ACTIONS.

(a) AUTHORITY TO BRING CIVIL ACTIONS.—

(1) CITIZEN SUITS.—Except as provided in subsection (e), any person may commence a civil action on his own behalf against the following:

(A) An owner or operator of a facility for failure to do any of the following:

(i) Submit a followup emergency notice under section 304(c).

(ii) Submit a material safety data sheet or a list under section 311(a).

(iii) Complete and submit an inventory form under section 312(a) containing tier I information as described in section 312(d)(1) unless such requirement does not apply by reason of the second sentence of section 312(a)(2).

(iv) Complete and submit a toxic chemical release form under section 313(a).

(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 312(g).

(ii) Respond to a petition to add or delete a chemical under section 313(e)(1) within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under 313(g).

(iv) Establish a computer database in accordance with section 313(j).

(v) Promulgate trade secret regulations under section 322(c).

(vi) Render a decision in response to a petition under section 322(d) within 9 months after receipt of the petition.

(C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 324(a).

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 312(e)(3) within 120 days after the date of receipt of the request.

(2) STATE OR LOCAL SUITS.—

(A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 302(c).

(ii) Submit a material safety data sheet or a list under section 311(a).

(iii) Make available information requested under section 311(c).

(iv) Complete and submit an inventory form under section 312(a) containing tier I information unless such requirement does not apply by reason of the second sentence of section 312(a)(2).

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 303(d) or for failure to submit tier II information under section 312(e)(1).

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 322(g).

(b) VENUE.—

(1) Any action under subsection (a) against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (a) against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a) against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) against the Administrator to order the Administrator to perform the act or duty concerned.

(d) NOTICE.—

(1) No action may be commenced under subsection (a)(1)(A) prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) LIMITATION.—No action may be commenced under subsection (a) against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of the requirement.

(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) OTHER RIGHTS.—Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) INTERVENTION.—

(1) BY THE UNITED STATES.—In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) BY PERSONS.—In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

SEC. 327. EXEMPTION.

Except as provided in section 304, this title does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this title, including the transportation and distribution of natural gas.

SEC. 328. REGULATIONS.

The Administrator may prescribe such regulations as may be necessary to carry out this title.

SEC. 329. DEFINITIONS.

For purposes of this title—

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) ENVIRONMENT.—The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(3) EXTREMELY HAZARDOUS SUBSTANCE.—The term "extremely hazardous substance" means a substance on the list described in section 302(a)(2).

(4) FACILITY.—The term "facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 304, the term includes motor vehicles, rolling stock, and aircraft.

(5) HAZARDOUS CHEMICAL.—The term "hazardous chemical" has the meaning given such term by section 311(e).

(6) MATERIAL SAFETY DATA SHEET.—The term "material safety data sheet" means the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(7) PERSON.—The term "person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

(8) RELEASE.—The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

(9) STATE.—The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto

Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

(10) TOXIC CHEMICAL.—The term "toxic chemical" means a substance on the list described in section 313(c).

SEC. 330. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this title.

TITLE IV—RADON GAS AND INDOOR AIR QUALITY RESEARCH

SEC. 401. SHORT TITLE.

This title may be cited as the "Radon Gas and Indoor Air Quality Research Act of 1986".

SEC. 402. FINDINGS.

The Congress finds that:

(1) High levels of radon gas pose a serious health threat in structures in certain areas of the country.

(2) Various scientific studies have suggested that exposure to radon, including exposure to naturally occurring radon and indoor air pollutants, poses a public health risk.

(3) Existing Federal radon and indoor air pollutant research programs are fragmented and underfunded.

(4) An adequate information base concerning exposure to radon and indoor air pollutants should be developed by the appropriate Federal agencies.

SEC. 403. RADON GAS AND INDOOR AIR QUALITY RESEARCH PROGRAM.

(a) DESIGN OF PROGRAM.—The Administrator of the Environmental Protection Agency shall establish a research program with respect to radon gas and indoor air quality. Such program shall be designed to—

(1) gather data and information on all aspects of indoor air quality in order to contribute to the understanding of health problems associated with the existence of air pollutants in the indoor environment;

(2) coordinate Federal, State, local, and private research and development efforts relating to the improvement of indoor air quality; and

(3) assess appropriate Federal Government actions to mitigate the environmental and health risks associated with indoor air quality problems.

(b) PROGRAM REQUIREMENTS.—The research program required under this section shall include—

(1) research and development concerning the identification, characterization, and monitoring of the sources and levels of indoor air pollution, including radon, which includes research and development relating to—

(A) the measurement of various pollutant concentrations and their strengths and sources,

(B) high-risk building types, and

(C) instruments for indoor air quality data collection;

(2) research relating to the effects of indoor air pollution and radon on human health;

(3) research and development relating to control technologies or other mitigation measures to prevent or abate indoor air pollution (including the development, evaluation, and testing of individual and generic control devices and systems);

(4) demonstration of methods for reducing or eliminating indoor air pollution and radon, including sealing, venting, and other methods that the Administrator determines may be effective;

(5) research, to be carried out in conjunction with the Secretary of Housing and Urban Development, for the purpose of developing—

(A) methods for assessing the potential for radon contamination of new construction, including (but not limited to) consideration of the moisture content of soil, porosity of soil, and radon content of soil; and

(B) design measures to avoid indoor air pollution; and

(6) the dissemination of information to assure the public availability of the findings of the activities under this section.

(c) ADVISORY COMMITTEES.—The Administrator shall establish a committee comprised of individuals representing Federal agencies concerned with various aspects of indoor air quality and an advisory group comprised of individuals representing the States, the scientific community, industry, and public interest organizations to assist him in carrying out the research program for radon gas and indoor air quality.

(d) IMPLEMENTATION PLAN.—Not later than 90 days after the enactment of this Act, the Administrator shall submit to the Congress a plan for implementation of the research program under this section. Such plan shall also be submitted to the EPA Science Advisory Board, which shall, within a reasonable period of time, submit its comments on such plan to Congress.

(e) REPORT.—Not later than 2 years after the enactment of this Act, the Administrator shall submit to Congress a report respecting his activities under this section and making such recommendations as appropriate.

SEC. 404. CONSTRUCTION OF TITLE.

Nothing in this title shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this title. Nothing in this title shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

SEC. 405. AUTHORIZATIONS.

There are authorized to be appropriated to carry out the activities under this title and under section 118(k) of the Superfund Amendments and Reauthorization Act of 1986 (relating to radon gas assessment and demonstration program) not to exceed $5,000,000 for each of the fiscal years 1987, 1988, and 1989. Of such sums appropriated in fiscal years 1987 and 1988, two-fifths shall be reserved for the implementation of section 118(k)(2).

TITLE V—AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1986

SEC. 501. SHORT TITLE.

This title may be cited as the "Superfund Revenue Act of 1986".

PART I—SUPERFUND AND ITS REVENUE SOURCES

SEC. 511. EXTENSION OF ENVIRONMENTAL TAXES.

(a) IN GENERAL.—Subsection (d) of section 4611 of the Internal Revenue Code of 1986 (relating to termination) is amended to read as follows:

"(d) APPLICATION OF TAXES.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the taxes imposed by this section shall apply after December 31, 1986, and before January 1, 1992.

"(2) NO TAX IF UNOBLIGATED BALANCE IN FUND EXCEEDS $3,500,000,000.—IF ON DECEMBER 31, 1989, OR DECEMBER 31, 1990—

"(A) the unobligated balance in the Hazardous Substance Superfund exceeds $3,500,000,000, and

"(B) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the unobligated balance in the Hazardous Substance Superfund will exceed $3,500,000,000 on December 31 of 1990 or 1991, respectively, if no tax is imposed under section 59A, this section, and sections 4661 and 4671,

then no tax shall be imposed under this section during 1990 or 1991, as the case may be.

"(3) NO TAX IF AMOUNTS COLLECTED EXCEED $6,650,000,000.—

"(A) ESTIMATES BY SECRETARY.—The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of the amount of taxes which will be collected under section 59A, this section, and sections 4661 and 4671 and credited to the Hazardous Substance Superfund during the period beginning January 1, 1987, and ending December 31, 1991.

"(B) TERMINATION IF $6,650,000,000 CREDITED BEFORE JANUARY 1, 1992.—If the Secretary estimates under subparagraph (A) that more than $6,650,000,000 will be credited to the Fund before January 1, 1992, no tax shall be imposed under this section after the date on which (as estimated by the Secretary) $6,650,000,000 will be so credited to the Fund."

(b) TECHNICAL AMENDMENT.—Section 303 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 512. INCREASE IN TAX ON PETROLEUM.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1986 (relating to environmental tax on petroleum) are each amended by striking out "of 0.79 cent a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the rate of the taxes imposed by this section is 8.2 cents a barrel.

"(2) IMPORTED PETROLEUM PRODUCTS.—The rate of the tax imposed by subsection (a)(2) shall be 11.7 cents a barrel."

(c) ALLOWANCE OF CREDIT FOR CRUDE OIL RETURNED TO PIPELINE.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) CREDIT WHERE CRUDE OIL RETURNED TO PIPELINE.—Under regulations prescribed by the Secretary, if an operator of a United States refinery—

"(1) removes crude oil from a pipeline, and

"(2) returns a portion of such crude oil into a stream of other crude oil in the same pipeline,

there shall be allowed as a credit against the tax imposed by section 4611 to such operator an amount equal to the product of the rate of tax imposed by section 4611 on the crude oil so removed by such operator and the number of barrels of crude oil returned by such operator to such pipeline. Any crude oil so returned shall be treated for purposes of this subchapter as crude oil on which no tax has been imposed by section 4611."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 513. CHANGES RELATING TO TAX ON CERTAIN CHEMICALS.

(a) INCREASE IN RATE OF TAX ON XYLENE.—The table contained in subsection (b) of section 4661 of the Internal Revenue Code of 1986 (relating to tax on certain chemicals) is amended by adding at the end thereof the following new sentence:

"For periods before 1992, the item relating to xylene in the preceding table shall be applied by substituting '10.13' for '4.87'."

(b) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

(1) Section 4662 of such Code (relating to definitions and special rules) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

"(1) TAX-FREE SALES.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) PROOF OF EXPORT REQUIRED.—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

"(2) CREDIT OR REFUND WHERE TAX PAID.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if—

"(i) tax under section 4661 was paid with respect to any taxable chemical, and

"(ii)(I) such chemical was exported by any person, or

"(II) such chemical was used as a material in the manufacture or production of a substance which was exported by any person and which, at the time of export, was a taxable substance (as defined in section 4672(a)),

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) CONDITION TO ALLOWANCE.—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical or taxable substance (as so defined), or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection."

(2) Paragraph (1) of section 4662(d) of such Code (relating to refund or credit for certain uses) is amended—

(A) by striking out "the sale of which by such person would be taxable under such section" and inserting in lieu thereof "which is a taxable chemical", and

(B) by striking out "imposed by such section on the other substance manufactured or produced" and inserting in lieu thereof "imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section)".

(c) SPECIAL RULE FOR XYLENE.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (6) the following new paragraph:

"(7) SPECIAL RULE FOR XYLENE.—Except in the case of any substance imported into the United States or exported from the United States, the term 'xylene' does not include any separated isomer of xylene."

(d) EXEMPTION FOR CERTAIN RECYCLED CHEMICALS.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (7) the following new paragraph:

"(8) RECYCLED CHROMIUM, COBALT, AND NICKEL.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, or nickel which is diverted or recovered in the United States from any solid waste

as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) EXEMPTION NOT TO APPLY WHILE CORRECTIVE ACTION UNCOMPLETED.—Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer at the unit at which the recycling occurs is uncompleted.

"(C) REQUIRED CORRECTIVE ACTION.—For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

"(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

"(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

"(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

"(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(D) SPECIAL RULE FOR GROUNDWATER TREATMENT.—In the case of corrective action requiring groundwater treatment, such action shall be treated as completed as of the close of the 10-year period beginning on the date such action is required if such treatment complies with the permit or order applicable under subparagraph (C)(i) throughout such period. The preceding sentence shall cease to apply beginning on the date such treatment ceases to comply with such permit or order.

"(E) SOLID WASTE.—For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal."

(e) EXEMPTION FOR ANIMAL FEED SUBSTANCES.—

(1) IN GENERAL.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (8) the following new paragraph:

"(9) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of—

"(i) nitric acid,

"(ii) sulfuric acid,

"(iii) ammonia, or

"(iv) methane used to produce ammonia,

which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the 1st person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical."

(2) REFUND OR CREDIT FOR SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—Subsection (d) of section 4662 of such Code (relating to refunds and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

"(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section."

(f) CERTAIN EXCHANGES BY TAXPAYERS NOT TREATED AS SALES.—Subsection (c) of section 4662 of such Code (relating to use by manufacturers) is amended to read as follows:

"(c) USE AND CERTAIN EXCHANGES BY MANUFACTURER, ETC.—

"(1) USE TREATED AS SALE.—Except as provided in subsections (b) and (e), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(2) SPECIAL RULES FOR INVENTORY EXCHANGES.—

"(A) IN GENERAL.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

"(B) REGISTRATION REQUIRFMENT.—Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(C) INVENTORY EXCHANGE.—For purposes of this paragraph, the term 'inventory exchange' means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(1)."

(g) SPECIAL RULES RELATING TO HYDROCARBON STREAMS CONTAINING ORGANIC TAXABLE CHEMICALS.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (9) the following new paragraph:

"(10) HYDROCARBON STREAMS CONTAINING MIXTURES OF ORGANIC TAXABLE CHEMICALS.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream containing a mixture of organic taxable chemicals.

"(B) REMOVAL, ETC., TREATED AS USE.—For purposes of this part, if any organic taxable chemical on which no tax was imposed by reason of subparagraph (A) is isolated, extracted, or otherwise removed from, or ceases to be part of, an intermediate hydrocarbon stream—

"(i) such isolation, extraction, removal, or cessation shall be treated as use by the person causing such event, and

"(ii) such person shall be treated as the manufacturer of such chemical.

"(C) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any sale of any intermediate hydrocarbon stream unless the registration requirements of clauses (i) and (ii) of subsection (c)(2)(B) are satisfied.

"(D) ORGANIC TAXABLE CHEMICAL.—For purposes of this paragraph, the term 'organic taxable chemical' means any taxable chemical which is an organic substance."

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on January 1, 1987.

(2) REPEAL OF TAX ON XYLENE FOR PERIODS BEFORE OCTOBER 1, 1985.—

(A) REFUND OF TAX PREVIOUSLY IMPOSED.—

(i) IN GENERAL.—In the case of any tax imposed by section 4661 of the Internal Revenue Code of 1954 on the sale or use of xylene before October 1, 1985, such tax (including interest, additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

(ii) CONDITION TO ALLOWANCE.—Clause (i) shall not apply to a sale of xylene unless the person who (but for clause (i)) would be liable for the tax imposed by section 4661 on such sale meets requirements similar to the requirements of paragraph (1) of section 6416(a) of such Code. For purposes of the preceding sentence, subparagraph (A) of section 6416(a)(1) of such Code shall be applied without regard to the material preceding "has not collected".

(B) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

(C) XYLENE TO INCLUDE ISOMERS.—For purposes of this paragraph, the term "xylene" shall include any isomer of xylene whether or not separated.

(3) INVENTORY EXCHANGES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (f) shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980.

(B) RECIPIENT MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall apply only if the person receiving the chemical from the manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1954.

(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

(D) REGISTRATION REQUIREMENTS.—Section 4662(c)(2)(B) of such Code (as added by subsection (f)) shall apply to exchanges made after December 31, 1986.

(4) EXPORTS OF TAXABLE SUBSTANCES.—Subclause (II) of section 4662(e)(2)(A)(ii) of such Code (as added by this section) shall not apply to the export of any taxable substance (as defined in section 4672(a) of such Code) before January 1, 1989.

(5) SALES OF INTERMEDIATE HYDROCARBON STREAMS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (g) shall apply as if included in the amendments made by section 211 of the Hazardous Substances Response Revenue Act of 1980.

(B) PURCHASER MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall apply only if the purchaser agrees to be treated as the manufacturer, producer, or importer for purposes of subchapter B of chapter 38 of such Code.

(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall not apply if the manufacturer, producer, or importer of such stream paid the tax imposed by section 4661 with respect to such sale on all taxable chemicals contained in such stream.

(D) REGISTRATION REQUIREMENTS.—Section 4662(b)(10)(C) of such Code (as added by subsection (g)) shall apply to exchanges made after December 31, 1986.

SEC. 514. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) REPEAL OF TAX.—

(1) Subchapter C of chapter 38 of the Internal Revenue Code of 1986 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) REPEAL OF TRUST FUND.—Section 232 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on October 1, 1983.

(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of this section is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

SEC. 515. TAX ON CERTAIN IMPORTED SUBSTANCES DERIVED FROM TAXABLE CHEMICALS.

(a) GENERAL RULE.—Chapter 38 of the Internal Revenue Code of 1986 is amended by adding after subchapter B the following new subchapter:

"Subchapter C—Tax on Certain Imported Substances

"SEC. 4671. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals

used as materials in the manufacture or production of such substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of such taxable substance.

"(2) RATE WHERE IMPORTER DOES NOT FURNISH INFORMATION TO SECRETARY.—If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

"(3) AUTHORITY TO PRECRIBE RATE IN LIEU OF PARAGRAPH (2) RATE.—The Secretary may prescribe for each taxable substance a tax which, if prescribed, shall apply in lieu of the tax specified in paragraph (2) with respect to such substance. The tax prescribed by the Secretary shall be equal to the amount of tax which would be imposed by subsection (a) with respect to the taxable substance if such substance were produced using the predominant method of production of such substance.

"(c) EXEMPTIONS FOR SUBSTANCES TAXED UNDER SECTIONS 4611 AND 4661.—No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

"(d) TAX-FREE SALES, ETC. FOR SUBSTANCES USED AS CERTAIN FUELS OR IN THE PRODUCTION OF FERTILIZER OR ANIMAL FEED.—Rules similar to the following rules shall apply for purposes of applying this section with respect to taxable substances used or sold for use as described in such rules:

"(1) Paragraphs (2), (5), and (9) of section 4662(b) (relating to tax-free sales of chemicals used as fuel or in the production of fertilizer or animal feed).

"(2) Paragraphs (2), (3), and (4) of section 4662(d) (relating to refund or credit of tax on certain chemicals used as fuel or in the production of fertilizer or animal feed).

"(e) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

"SEC. 4672. DEFINITIONS AND SPECIAL RULES.

"(a) TAXABLE SUBSTANCE.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'taxable substance' means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

"(2) DETERMINATION OF SUBSTANCES ON LIST.—A substance shall be listed under paragraph (1) if—

"(A) the substance is contained in the list under paragraph (3), or

"(B) the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of Customs, that taxable chemicals constitute more than 50 percent of the weight of the materials

used to produce such substance (determined on the basis of the predominant method of production).

"(3) INITIAL LIST OF TAXABLE SUBSTANCES.—

Cumene
Styrene
Ammonium nitrate
Nickel oxide
Isopropyl alcohol
Ethylene glycol
Vinyl chloride
Polyethylene resins, total
Polybutadiene
Styrene-butadiene, latex
Styrene-butadiene, snpf
Synthetic rubber, not containing fillers
Urea
Ferronickel
Ferrochromium nov 3 pct
Ferrochrome ov 3 pct. carbon
Unwrought nickel
Nickel waste and scrap
Wrought nickel rods and wire
Nickel powders
Phenolic resins
Polyvinylchloride resins
Polystyrene resins and copolymers
Ethyl alcohol for nonbeverage use
Ethylbenzene
Methylene chloride
Polypropylene
Propylene glycol
Formaldehyde
Acetone
Acrylonitrile
Methanol
Propylene oxide
Polypropylene resins
Ethylene oxide
Ethylene dichloride
Cyclohexane
Isophthalic acid
Maleic anhydride
Phthalic anhydride
Ethyl methyl ketone
Chloroform
Carbon tetrachloride
Chromic acid
Hydrogen peroxide
Polystyrene homopolymer resins
Melamine
Acrylic and methacrylic acid resins
Vinyl resins
Vinyl resins, NSPF.

"(4) MODIFICATIONS TO LIST.—

"(A) IN GENERAL.—The Secretary may add substances to or remove substances from the list under paragraph (3) (including items listed by reason of paragraph (2)) as necessary to carry out the purposes of this subchapter.

"(B) AUTHORITY TO ADD SUBSTANCES TO LIST BASED ON VALUE.—The Secretary may, to the extent necessary to carry out the purposes of this subchapter, add any substance to the list under paragraph (3) if such substance would be described in paragraph (2)(B) if 'value' were substituted for 'weight' therein.

"(b) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) IMPORTER.—The term 'importer' means the person entering the taxable substance for consumption, use, or warehousing.

"(2) TAXABLE CHEMICALS; UNITED STATES.—The terms 'taxable chemical' and 'United States' have the respective meanings given such terms by section 4662(a).

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4671."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter B the following new item:

"Subchapter C. Tax on certain imported substances."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1989.

(d) STUDY.—

(1) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of issues relating to the implementation of—

(A) the tax imposed by the section 4671 of the Internal Revenue Code of 1986 (as added by this section), and

(B) the credit for exports of taxable substances under section 4661(e)(2)(A)(ii)(II) of such Code.

In conducting such study, the Secretary of the Treasury or his delegate shall consult with the Environmental Protection Agency and the International Trade Commission.

(2) REPORT.—The report of the study under paragraph (1) shall be submitted not later than January 1, 1988, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 516. ENVIRONMENTAL TAX.

(a) IN GENERAL.—Subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to income taxes) is amended by adding at the end thereof the following new part:

"PART VII—ENVIRONMENTAL TAX

"Sec. 59A. Environmental tax.

"SEC. 59A. ENVIRONMENTAL TAX.

"(a) IMPOSITION OF TAX.—In the case of a corporation, there is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to 0.12 percent of the excess of—

"(1) the modified alternative minimum taxable income of such corporation for the taxable year, over

"(2) $2,000,000.

"(b) MODIFIED ALTERNATIVE MINIMUM TAXABLE INCOME.—For purposes of this section, the term 'modified alternative minimum taxable income' means alternative minimum taxable income (as defined in section 55(b)(2)) but determined without regard to—

"(1) the alternative tax net operating loss deduction (as defined in section 56(d)), and

"(2) the deduction allowed under section 164(a)(5).

"(c) SPECIAL RULES.—

"(1) SHORT TAXABLE YEARS.—The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary.

"(2) SECTION 15 NOT TO APPLY.—Section 15 shall not apply to the tax imposed by this section.

"(d) APPLICATION OF TAX.—

"(1) IN GENERAL.—The tax imposed by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

"(2) EARLIER TERMINATION.—The tax imposed by this section shall not apply to taxable years—

"(A) beginning during a calendar year during which no tax is imposed under section 4611(a) by reason of paragraph (2) of section 4611(e), and

"(B) beginning after the calendar year which includes the termination date under paragraph (3) of section 4611(e)."

(b) TECHNICAL AMENDMENTS.—

(1) NO CREDITS ALLOWED AGAINST TAX.—

(A) Paragraph (2) of section 26(b) of such Code, as amended by the Tax Reform Act of 1986, is amended by redesignating subparagraphs (B) through (J) as subparagraphs (C) through (K), respectively, and by inserting after subparagraph (A) the following new subparagraph:

"(B) section 59A (relating to environmental tax),".

(B) Paragraph (3) of section 936(a) of such Code, as so amended, is amended by redesignating subparagraphs (A), (B), and (C) as subparagraphs (B), (C), and (D), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) section 59A (relating to environmental tax),".

(2) TAX TO BE DEDUCTIBLE FOR INCOME TAX PURPOSES.—

(A) Subsection (a) of section 164 of such Code (relating to deduction for taxes), as so amended, is amended by inserting after paragraph (4) the following new paragraph:

"(5) The environmental tax imposed by section 59A."

(B) Subsection (a) of section 275 of such Code is amended by adding at the end thereof the following new sentence: "Paragraph (1) shall not apply to the tax imposed by section 59A."

(3) LIMITATION IN CASE OF CONTROLLED CORPORATIONS.—Subsection (a) of section 1561 of such Code (relating to limitations on certain multiple tax benefits in the case of certain controlled corporations), as amended by the Tax Reform Act of 1986, is amended—

(A) by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and", and by inserting after paragraph (3) the following new paragraph:

"(4) one $2,000,000 amount for purposes of computing the tax imposed by section 59A.", and

(B) by striking out "(and the amount specified in paragraph (3))" and inserting in lieu thereof ", the amount specified in paragraph (3), and the amount specified in paragraph (4)".

(4) AMENDMENTS TO ESTIMATED TAX PROVISIONS.—

(A) TAX LIABILITY MUST BE ESTIMATED.—

(i) Paragraph (1) of section 6154(c) of such Code, as so amended, is amended by striking out "and" at the end of subparagraph (A), by striking out "over" at the end of subparagraph (B) and inserting in lieu thereof "and", and by adding at the end thereof the following new subparagraph:

"(C) the environmental tax imposed by section 59A, over".

(ii) Subsection (a) of section 6154 of such Code is amended by striking out "section 11" and inserting "section 11, 59A,".

(C) CONFORMING AMENDMENT TO OVERPAYMENT OF ESTIMATED TAX.—Subparagraph (A) of section 6425(c)(1) of such Code, as amended by the Tax Reform Act of 1986, is amended by striking out "plus" at the end of clause (i), by striking out "over" at the end of clause (ii) and inserting in lieu thereof "plus", and by adding at the end thereof the following new clause:

"(iii) the tax imposed by section 59A, over".

(D) CONFORMING AMENDMENT TO PENALTY FOR FAILURE TO PAY ESTIMATED TAX.—Paragraph (1) of section 6655(f) of such Code (defining tax), as so amended, is amended by striking out "plus" at the end of subparagraph (A), by striking out "over" at the end of subparagraph (B) and inserting in lieu thereof "plus", and by adding at the end thereof the following new subparagraph:

"(C) the tax imposed by section 59A, over".

(5) CLERICAL AMENDMENT.—The table of parts for subchapter A of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Part VII. Environmental tax."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 517. HAZARDOUS SUBSTANCE SUPERFUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

"SEC. 9507. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Hazardous Substance Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be—

"(1) appropriated to the Superfund as provided in this section,

"(2) appropriated to the Superfund pursuant to section 517(b) of the Superfund Revenue Act of 1986, or

"(3) credited to the Superfund as provided in section 9602(b).

"(b) TRANSFERS TO SUPERFUND.—There are hereby appropriated to the Superfund amounts equivalent to—

"(1) the taxes received in the Treasury under section 59A, 4611, 4661, or 4671 (relating to environmental taxes),

"(2) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as 'CERCLA'),

"(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

"(4) penalties assessed under title I of CERCLA, and

"(5) punitive damages under section 107(c)(3) of CERCLA.

"(c) EXPENDITURES FROM SUPERFUND.—

"(1) IN GENERAL.—Amounts in the Superfund shall be available, as provided in appropriation Acts, only for purposes of making expenditures—

"(A) to carry out the purposes of—

"(i) paragraphs (1), (2), (5), and (6) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986,

"(ii) section 111(c) of CERCLA (as so in effect), other than paragraphs (1) and (2) thereof, and

"(iii) section 111(m) of CERCLA (as so in effect), or

"(B) hereafter authorized by a law which does not authorize the expenditure out of the Superfund for a general purpose not covered by subparagraph (A) (as so in effect).

"(2) EXCEPTION FOR CERTAIN TRANSFERS, ETC., OF HAZARDOUS SUBSTANCES.—No amount in the Superfund or derived from the Superfund shall be available or used for the transfer or disposal of hazardous waste carried out pursuant to a cooperative agreement between the Administrator of the Environmental Protection Agency and a State if the following conditions apply—

"(A) the transfer or disposal, if made on December 13, 1985, would not comply with a State or local requirement,

"(B) the transfer is to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act was issued after January 1, 1983, and before November 1, 1984, and

"(C) the transfer is from a facility identified as the McColl Site in Fullerton, California.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

"(2) LIMITATION ON AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Superfund which is outstanding at any one time shall not exceed an amount equal to the amount which the Secretary estimates will be equal to the sum of the amounts appropriated to the Superfund under subsection (b)(1) during the following 24 months.

"(3) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made to the Superfund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund.

"(B) FINAL REPAYMENT.—No advance shall be made to the Superfund after December 31, 1991, and all advances to such Fund shall be repaid on or before such date.

"(C) RATE OF INTEREST.—Interest on advances made to the Superfund shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Superfund may be paid only out of the Superfund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in CERCLA or the Superfund Amendments and Reauthorization Act of 1986 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Superfund has insufficient funds to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund for fiscal year—

(1) 1987, $250,000,000,
(2) 1988, $250,000,000,
(3) 1989, $250,000,000,
(4) 1990, $250,000,000, and
(5) 1991, $250,000,000,

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.

(c) CONFORMING AMENDMENTS.—

(1) Subtitle B of the Hazardous Substance Response Revenue Act of 1980 (relating to establishment of Hazardous Substance Response Trust Fund), as amended by section 204 of this Act, is hereby repealed.

(2) Paragraph (11) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(11) The term 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986."

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9506 the following new item:

"Sec. 9507. Hazardous Substance Superfund."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1987.

(2) SUPERFUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Hazardous Substance Superfund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980. Any reference in any law to the Hazardous Substance Response Trust Fund established by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section.

PART II—LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND ITS REVENUE SOURCES

SEC. 521. ADDITIONAL TAXES ON GASOLINE, DIESEL FUEL, SPECIAL MOTOR FUELS, FUELS USED IN AVIATION, AND FUELS USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.

(a) GENERAL RULE.—

(1) GASOLINE.—

(A) GASOLINE TAX BEFORE AMENDMENT BY TAX REFORM ACT OF 1986.—

(i) IN GENERAL.—Section 4081 of the Internal Revenue Code of 1986 (relating to imposition of tax on gasoline), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) IN GENERAL.—There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax at the rate specified in subsection (b).

"(b) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by this section is the sum of—

"(A) the Highway Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Highway Trust Fund financing rate is 9 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon."

(ii) TERMINATION.—Section 4081 of such Code, as so in effect, is amended by adding at the end thereof the following new subsection:

"(d) TERMINATION.—

"(1) HIGHWAY TRUST FUND FINANCING RATE.—On and after October 1, 1988, the Highway Trust Fund financing rate under subsection (b)(2)(A) shall not apply.

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—

"(A) IN GENERAL.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (b)(2)(B) shall not apply after the earlier of—

"(i) December 31, 1991, or

"(ii) the last day of the termination month.

"(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by this section (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under subsection (b)(2)(B)), section 4041(d), and section 4042 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b)) are at least $500,000,000.

"(C) NET REVENUES.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 9508(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

(iii) TECHNICAL AMENDMENTS.—Subsection (c) of section 4081 of such Code, as so in effect, is amended—

(I) by striking out "subsection (a)" in paragraph (1) and inserting in lieu thereof "subsection (b)", and

(II) by striking out "a rate" in paragraph (2) and inserting in lieu thereof "a Highway Trust Fund financing rate".

(B) GASOLINE TAX AS AMENDED BY TAX REFORM ACT OF 1986.—

(i) IN GENERAL.—Subsections (a) and (b) of section 4081 of the Internal Revenue Code of 1986 (relating to imposition of tax on gasoline), as amended by the Tax Reform Act of 1986, are each amended by striking out "of 9 cents a gallon" and inserting in lieu thereof "at the rate specified in subsection (d)".

(ii) INCREASE IN TAX.—Section 4081 of such Code, as amended by the Tax Reform Act of 1986, is amended by striking out subsection (d) and inserting in lieu thereof the the following new subsections:

"(d) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by this section is the sum of—

"(A) the Highway Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Highway Trust Fund financing rate is 9 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon.

"(e) TERMINATION.—

"(1) HIGHWAY TRUST FUND FINANCING RATE.—On and after October 1, 1988, the Highway Trust Fund financing rate under subsection (d)(2)(A) shall not apply.

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—

"(A) IN GENERAL.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (d)(2)(B) shall not apply after the earlier of—

"(i) December 31, 1991, or

"(ii) the last day of the termination month.

"(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by this section (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under subsection (d)(2)(B)), section 4041(d), and section 4042 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b)) are at least $500,000,000.

"(C) NET REVENUES.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 9508(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

(iii) TECHNICAL AMENDMENTS.—Subsection (c) of section 4081 of such Code, as amended by the Tax Reform Act of 1986, is amended—

(I) by striking out "subsection (a)" in paragraph (1) and inserting in lieu thereof "subsection (d)", and

(II) by striking out "a rate" in paragraph (2) and inserting in lieu thereof "a Highway Trust Fund financing rate".

(2) DIESEL AND SPECIAL MOTOR FUELS; FUELS USED IN AVIATION.—Section 4041 of such Code (relating to tax on special fuels) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL TAXES TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

"(1) LIQUIDS OTHER THAN GASOLINE, ETC., USED IN MOTOR VEHICLES, MOTORBOATS, OR TRAINS.—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.1 cents a gallon on benzol, benzene, naphtha, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, liquefied petroleum gas, or fuel oil, or any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or train for use as a fuel in such motor vehicle, motorboat, or train, or

"(B) used by any person as a fuel in a motor vehicle, motorboat, or train unless there was a taxable sale of such liquid under subparagraph (A).

"(2) LIQUIDS USED IN AVIATION.—In addition to the taxes imposed by subsection (c) and section 4081, there is hereby imposed a tax of 0.1 cents a gallon on any liquid—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

"(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

The tax imposed by this paragraph shall not apply to any product taxable under section 4081 which is used as a fuel in an aircraft other than in noncommercial aviation.

"(3) TERMINATION.—The taxes imposed by this subsection shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply."

(3) FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.—Subsection (b) of section 4042 of such Code (relating to amount of tax on fuel used in commercial transportation on inland waterways) is amended to read as follows:

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) is the sum of—

"(A) the Inland Waterways Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Inland Waterways Trust Fund financing rate is 10 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon.

"(3) EXCEPTION FOR FUEL TAXED UNDER SECTION 4041(d).—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax under section 4041(d) was imposed on the sale of such fuel or is imposed on such use.

"(4) TERMINATION OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply."

(b) ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND, AIRPORT AND AIRWAY TRUST FUND, AND INLAND WATERWAYS TRUST FUND.—

(1) HIGHWAY TRUST FUND.—

(A) IN GENERAL.—Subsection (b) of section 9503 of such Code (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by adding at the end thereof the following new paragraph:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), there shall not be taken into account the taxes imposed by section 4041(d) and so much of the taxes imposed by section 4081 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate."

(B) CONFORMING AMENDMENT.—Subparagraph (D) of section 9503(c)(4) of such Code (defining motorboat fuel taxes) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081 (to the extent attributable to the Highway Trust Fund financing rate)".

(2) AIRPORT AND AIRWAY TRUST FUND.—Subsection (b) of section 9502 of such Code (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended—

(A) by striking out "subsections (c) and (d) of section 4041" in paragraph (1) and inserting in lieu thereof "subsections (c) and (e) of section 4041", and

(B) by striking out "section 4081" in paragraph (2) and inserting in lieu thereof "section 4081 (to the extent attributable to the Highway Trust Fund financing rate)".

(3) INLAND WATERWAYS TRUST FUND.—Paragraph (1) of section 9506(b) of such Code is amended by adding at the end thereof the following new sentence: "The preceding sentence shall apply only to so much of such taxes as are attributable to the Inland Waterways Trust Fund financing rate under section 4042(b)."

(c) REPAYMENTS FOR GASOLINE USED ON FARMS, ETC.—

(1) GASOLINE USED ON FARMS.—Subsection (h) of section 6420 of such Code (relating to termination) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section".

(2) GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS.—

(A) TERMINATION NOT TO APPLY TO ADDITIONAL 0.1 CENT TAX.—Subsection (h) of section 6421 of such Code (relating to effective date), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section".

(B) REPAYMENT OF ADDITIONAL TAX FOR OFF-HIGHWAY BUSINESS USE TO APPLY ONLY TO CERTAIN VESSELS.—Subsection (e) of section 6421 of such Code, as so in effect, is amended by adding at the end thereof the following new paragraph:

"(4) SECTION NOT TO APPLY TO CERTAIN OFF-HIGHWAY BUSINESS USES WITH RESPECT TO THE TAX IMPOSED BY SECTION 4081 AT THE LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—This section shall not apply with respect to the tax imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate on gasoline used in any

off-highway business use other than use in a vessel employed in the fisheries or in the whaling business."

(3) FUELS USED FOR NONTAXABLE PURPOSES.—

(A) Subsection (m) of section 6427 of such Code (relating to termination), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out "Subsections" and inserting in lieu thereof "Except with respect to taxes imposed by section 4041(d) and section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, subsections".

(B)(i) Section 6427 of such Code, as so in effect, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) PAYMENTS FOR TAXES IMPOSED BY SECTION 4041(d).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a)."

(ii) Subparagraph (A) of section 1703(e)(1) of the Tax Reform Act of 1986 is amended—

(I) by striking out "and (o)" and inserting in lieu thereof "(o), and (p)", and

(II) by striking out "and (n)" and inserting in lieu thereof "(n), and (o)".

(C) Paragraph (1) of section 6427(f) of such Code (relating to gasoline used to produce certain alcohol fuels) is amended by striking out "at the rate" and inserting in lieu thereof "at the Highway Trust Fund financing rate".

(d) CONTINUATION OF CERTAIN EXEMPTIONS FROM ADDITIONAL TAXES, ETC.—

(1) Subsection (b) of section 4041 of such Code (relating to exemption for off-highway business use; reduction in tax for qualified methanol and ethanol fuel) is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH TAXES IMPOSED BY SUBSECTION (d).—

"(A) OFF-HIGHWAY BUSINESS USE.—

"(i) IN GENERAL.—Except as provided in clause (ii), rules similar to the rules of paragraph (1) shall apply with respect to the taxes imposed by subsection (d).

"(ii) LIMITATION ON EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—For purposes of subparagraph (A), paragraph (1) shall apply only with respect to off-highway business use in a vessel employed in the fisheries or in the whaling business.

"(B) QUALIFIED METHANOL AND ETHANOL FUEL.—In the case of qualified methanol or ethanol fuel, subsection (d) shall be applied by substituting '0.05 cents' for '0.1 cents' in paragraph (1) thereof."

(2) Paragraph (3) of section 4041(f) of such Code (relating to exemption for farm use) is amended by striking out "On and after" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), on and after".

(3) The last sentence of section 4041(g) of such Code (relating to other exemptions) is amended by striking out "Paragraphs" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), paragraphs".

(4)(A) The last sentence of section 4221(a) of such Code (relating to certain tax-free sales) is amended by striking out "4081" and inserting in lieu thereof "4081 (at the Highway Trust Fund financing rate)".

(B) Subparagraph (C) of section 1703(c)(2) of the Tax Reform Act of 1986 is amended to read as follows:

"(C) Subsection (a) of section 4221 (relating to certain tax-free sales) is amended—

"(i) by inserting 'or section 4081 (at the Highway Trust Fund financing rate)' before 'section 4121' in the 1st sentence, and

"(ii) by striking out '4071, or 4081 (at the Highway Trust Fund financing rate)' in the last sentence and inserting in lieu thereof 'or 4071'."

(5) Paragraph (2) of section 6416(b) of such Code is amended by inserting "or under paragraph (1)(A) or (2)(A) of section 4041(d)" after "section 4041(a)".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 522. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of trust funds) is amended by adding after section 9507 the following new section:

"SEC. 9508. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Leaking Underground Storage Tank Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4041(d) (relating to additional taxes on motor fuels),

"(2) taxes received in the Treasury under section 4081 (relating to tax on gasoline) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section,

"(3) taxes received in the Treasury under section 4042 (relating to tax on fuel used in commercial transportation on inland waterways) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section, and

"(4) amounts received in the Treasury and collected under section 9003(h)(6) of the Solid Waste Disposal Act.

"(c) EXPENDITURES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986.

"(2) TRANSFERS FROM TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Leaking Underground Storage Tank Trust Fund into the general fund of the Treasury amounts equivalent to—

"(i) amounts paid under—

"(I) section 6420 (relating to amounts paid in respect of gasoline used on farms),

"(II) section 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems), and

"(III) section 6427 (relating to fuels not used for taxable purposes), and

"(ii) credits allowed under section 34, with respect to the taxes imposed by sections 4041(d) and 4081 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081).

"(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Leaking Underground Storage Tank Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Superfund Amendments and Reauthorization Act of 1986 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Leaking Underground Storage Tank Trust Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Leaking Underground Storage Tank Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9507 the following new item:

"Sec. 9508. Leaking Underground Storage Tank Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

PART III—COORDINATION WITH OTHER PROVISIONS OF THIS ACT

SEC. 531. COORDINATION.

Notwithstanding any provision of this Act not contained in this title, any provision of this Act (not contained in this title) which—

(1) imposes any tax, premium, or fee,

(2) establishes any trust fund, or

(3) authorizes amounts to be expended from any trust fund, shall have no force or effect.

And the House agree to the same.

That the House recede from its amendment to the amendment of the Senate to the title of the bill.

From the Committee on Energy and Commerce for consideration of titles I–III of the House amendment to the Senate amendment, and the entire Senate amendment, except for title II:

JOHN D. DINGELL.
JAMES J. FLORIO.
DENNIS E. ECKART.
RALPH M. HALL.
BILLY TAUZIN.
AL SWIFT.

From the Committee on Energy and Commerce:

Solely for sections 102, 103, 105, 111, 113, 115, 117, 120, 121, 122, 123, 124, and 127 of title I and title III of the House amendment to the Senate amendment, and modifications committed to conference including section 157 of the Senate amendment:

RON WYDEN.

Solely for sections 101, 104, 106, 107, 108, 109, 110, 112, 114, 116, 118, 119, 125, and 126 of title I and title II of the House amendment to the Senate amendment, and modifications committed to conference:

THOMAS J. TAUKE.
NORMAN F. LENT.
DON RITTER.

From the Committee on Energy and Commerce solely for sections 101, 104, 106, 107, 108, 109, 110, 112, 114, 116, 118, 119, 125, and 126 of title I and title II of the House amendment to the Senate amendment, and modifications committed to conference:

JACK FIELDS.

From the Committee on Public Works and Transportation for consideration of titles I, II (except for section 205) and IV of the House amendment to the Senate amendment, and title I of the Senate amendment, except for sections 110, 111, 127, 157, and 160 thereof:

JAMES J. HOWARD.
GLENN M. ANDERSON.
ROBERT A. ROE.
JOHN BREAUX.
NORMAN MINETA.
BOB EDGAR.
GENE SNYDER.

From the Committee on Public Works and Transportation for consideration of titles I, II (except for section 205) and IV of the House amendment to the Senate amendment, and title I of the Senate amendment, except for sections 110, 111, 127, 157, and 160 thereof:

ARLAN STANGELAND.
NEWT GINGRICH.

From the Committee on Public Works and Transportation for consideration of title III of the House amendment to the Senate amendment, and sections 110, 111, 127, and 160 of title I of the Senate amendment:

ROBERT A. ROE.
BOB EDGAR.
ARLAN STANGELAND.

From the Committee on Ways and Means for consideration of title V of the House amendment to the Senate amendment, and title II of the Senate amendment:

DAN ROSTENKOWSKI.
J.J. PICKLE.
C.B. RANGEL.
PETE STARK.
THOMAS J. DOWNEY.
MARTY RUSSO.
DONALD J. PEASE.

From the Committee on Ways and Means for consideration of title V of the House amendment to the Senate amendment, and title II of the Senate amendment:

GUY VANDER JAGT.
BILL FRENZEL.

From the Committee on Merchant Marine and Fisheries for consideration of sections 104, 107, 108, 111, 113, 116, 121, 122, and 127 of title I of the House amendment to the Senate amendment, and modifications committed to conference:

WALTER B. JONES.
MARIO BIAGGI.
GERRY E. STUDDS.
BOB DAVIS.

From the Committee on Merchant Marine and Fisheries for consideration of title IV of the House amendment to the Senate amendment, and modifications committed to conference:

WALTER B. JONES.
MARIO BIAGGI.
GERRY E. STUDDS.
BARBARA A. MIKULSKI.
MIKE LOWRY.
BILLY TAUZIN.

From the Committee on Merchant Marine and Fisheries for consideration of title IV of the House amendment to the Senate amendment, and modifications committed to conference:

BOB DAVIS.
NORMAN F. LENT.

From the Committee on the Judiciary for consideration of sections 107, 113, 117, 119, and 122, of title I and sections 203 and 206

of title II of the House amendment to the Senate amendment, and modifications committed to conference:

PETER W. RODINO.
DAN GLICKMAN.
HAMILTON FISH, Jr.
THOMAS N. KINDNESS.

From the Committee on Armed Services for consideration of section 213 of title II of the House amendment to the Senate amendment, and section 162 of title I of the Senate amendment:

DAVE MCCURDY,
DAVID O'B. MARTIN,
Managers on the Part of the House.

From the Committee on Environment and Public Works for the purpose of considering all matter other than that contained in title II of the Senate amendments, and section 463 of title IV and title V of the House amendments:

ROBERT T. STAFFORD.
JOHN H. CHAFEE.
ALAN K. SIMPSON.
GORDON J. HUMPHREY.
PETE V. DOMENICI.
DAVID DURENBERGER.
LLOYD BENTSEN.

From the Committee on Environment and Public Works for the purpose of considering all matter other than that contained in title II of the Senate amendments, and section 463 of title IV and title V of the House amendments:

DANIEL PATRICK MOYNIHAN.
GEORGE MITCHELL.
MAX BAUCUS.
FRANK R. LAUTENBERG.

From the Committee on Finance for the purpose of considering section 463 of title IV and title V of the House amendments, and title II of the Senate amendments:

BOB PACKWOOD.
BOB DOLE.
WILLIAM V. ROTH, Jr.
RUSSELL B. LONG.
LLOYD BENTSEN.

From the Committee on the Judiciary for the purpose of joining in the consideration of sections 135, 143, 144, and to the extent it may affect the Federal courts or relate to claims against the United States, section 150, together with such amendments related directly thereto as may have been adopted by the House:

STROM THURMOND,
ARLEN SPECTER,
EDWARD M. KENNEDY,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

SECTION 1—SHORT TITLE AND TABLE OF CONTENTS

Senate amendment—The short title of the Senate amendment is the "Superfund Improvement Act of 1985".

House amendment—The short title of the House amendment is the "Superfund Amendments of 1985".

Conference substitute—The short title of the conference substitute is the "Superfund Amendments and Reauthorization Act of 1986". The table of contents in the conference substitute was changed to conform to the changes in the text.

SECTION 2—CERCLA AND ADMINISTRATOR

Senate amendment—The Senate amendment has no comparable provision.

House amendment—The House amendment defines the term "CERCLA" as being the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and the term "Administrator" as being the Administrator of the Environmental Protection Agency.

Conference substitute—The conference substitute adopts the House provision. The term "CERCLA" refers to the 1980 Act, as amended, and references in CERCLA to "this Act" include the amendments made by the Superfund Amendments and Reauthorization Act of 1986.

SECTION 3—LIMITATION ON CONTRACT AND BORROWING AUTHORITY

Senate amendment—The Senate amendment has no comparable provision.

House amendment—The House amendment states that authorities provided by the House amendment are effective only to such extent as monies are provided in appropriations Acts.

Conference substitute—The conference substitute adopts the House provision. The amendment does not diminish any obligation of the United States under current law.

SECTION 4—EFFECTIVE DATE

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision establishing the effective date for the requirements of the Superfund Amendments and Reauthorization Act of 1986. The general rule is that the requirements of ttles I, II, III, and IV of the

Act take effect on the date of enactment. There are, however, two exceptions to the general rule.

First, if otherwise specified in the Act, the requirements would take effect on the date so specified.

Second, special rules apply with respect to section 121 of CERCLA (relating to cleanup standards). The requirements of section 121 do not apply to a remedial action for which the record of decision was signed (or the consent decree was lodged) prior to the date of enactment. The requirements of section 121 apply to the maximum extent practicable to a remedial action for which the record of decision is signed (or the consent decree is lodged) within the 30-day period immediately following enactment of the Act, and the EPA Administrator must certify in writing that such requirements have been complied with to the maximum extent practicable. The requirements of section 121 apply without qualification to a remedial action for which the record of decision is signed (or the consent decree is lodged) after the 30-day period immediately following enactment of the Act. In addition, the requirements of section 121 apply without qualification to any remedial action for which a record of decision was signed (or the consent decree was lodged) before enactment of the Act and is reopened after enactment of the Act to modify or supplement the selection of the remedy.

The Conferees were informed that approximately 18 sites would reach the point of decision during the 30-day period immediately following enactment of the Act, assuming an enactment date of September 1, 1986.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

SECTION 101—AMENDMENTS TO CERCLA DEFINITIONS

RELEASE

Senate amendment—The Senate amendment does not contain any comparable provision.

House amendment—The House amendment proposes to amend section 101(22) of CERCLA, which is the definition of "release," to explicitly incorporate "the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant."

Conference substitute—The conference substitute adopts the House proposal. This amendment to CERCLA confirms and clarifies the President's present authority under existing law to take response action with regard to such receptacles, whether or not they have broken open and are currently leaking hazardous substances, pollutants or contaminants. The phrase "containing any hazardous substance or pollutant or contaminant" includes residues of such hazardous substance or pollutant or contaminant.

REMEDIAL ACTION

Senate amendment—The Senate amendment proposes to amend section 101(24) of CERCLA, which is the definition of "remedy or

remedial action," to explicitly include the off-site transport, storage or secure disposition of hazardous substances, pollutants or contaminants.

House amendment—The House amendment contains a provision identical to that of the Senate.

Conference substitute—The conference substitute adopts the identical provisions.

RESPONSE

Senate amendment—The Senate amendment does not contain any provision comparable to that of the House amendment.

House amendment—The House amendment proposes to modify CERCLA section 101(25), which is the definition of "response," to explicitly include enforcement activities.

Conference substitute—The conference substitute adopts the House proposal. This amendment clarifies and confirms that such costs are recoverable from responsible parties, as removal or remedial costs under section 107.

POLLUTANT OR CONTAMINANT

Senate amendment—The Senate amendment does not contain any provision comparable to that of the House amendment.

House amendment—The House amendment proposes to relocate the definition of "pollutant or contaminant" from section 104(a)(2) of CERCLA, which is its current placement, to section 101, which is the law's definitions section.

Conference substitute—The conference substitute adopts the House amendment. This provision does not expand CERCLA liability concerning pollutants, contaminants or hazardous substances, found in current law.

OWNER OR OPERATOR: DEFINITION OF STATE

Senate amendment—The Senate amendment contains no provision comparable to that of the House amendment.

House amendment—The House amendment amends section 101(27) of CERCLA, which is the definition of "State," to exclude units of local government.

Conference substitute—The conference substitute does not include the House amendment to the definition of "State," leaving it to the court's interpretation of this provision.

OWNER OR OPERATOR: STATE OR LOCAL GOVERNMENT LIMITATION

Senate amendment—The Senate amendment proposes to modify section 101(20) of CERCLA, which is the definition of "owner or operator," to exclude a State or local government which acquired title or possession involuntarily and by virtue of its function as sovereign.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision, with a modification to clarify that if the unit of government caused or contributed to the release or threatened re-

lease in question, then such unit is subject to the provisions of CERCLA, both procedurally and substantively, as any non-governmental entity, including liability under section 107 and contribution under section 113.

ALTERNATIVE WATER SUPPLIES

Senate amendment—The Senate amendment proposes the addition to section 101 of CERCLA the definition of the term, "alternative water supplies."

House amendment—The House amendment does not contain any comparable provision.

Conference substitute—The conference substitute adopts the Senate amendment.

INDIAN TRIBE

Senate amendment—The Senate amendment amends section 101(16) of CERCLA, which defines "natural resources," to include as the owner, manager, or trustee of such resources any Indian tribe or, in certain instances, any member of an Indian tribe.

The Senate amendment also adds a new section 101(36) defining "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska native village (but not including a regional or village corporation) which is recognized as eligible for the special programs and services by the United States to Indians because of their status as Indians.

House amendment—The House amendment contains similar provisions.

Conference substitute—The conference substitute adopts the Senate provisions.

LANDOWNER LIABILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a proposed modification of the third-party defense to liability of section 107(b)(3). The purpose of the House amendment was to eliminate liability which might exist under section 107 for landowners who acquired title to real property after the time hazardous substances, pollutants or contaminants had come to be located thereon and who, although they had exercised due care with respect to discovering such materials, were nonetheless ignorant of their presence.

Conference substitute—The conference substitute adds to section 101 of CERCLA, which is the definitions section, a new term, "contractual relationship." This new definition of contractual relationship is intended to clarify and confirm that under limited circumstances landowners who acquire property without knowing of any contamination at the site and without reason to know of any contamination (or as otherwise noted in the amendment) may have a defense to liability under section 107 and therefore should not be held liable for cleaning up the site if such persons satisfy the remaining requirements of section 107(b)(3). A person who acquires property through a land contract or deed or other instrument

transferring title or possession that meets the requirements of this definition may assert that an act or omission of a third party should not be considered to have occurred in connection with a contractual relationship as identified in section 107(b) and therefore is not a bar to the defense.

In the limited circumstances identified in this definition, such landowners are entitled to the defense if they exercise the requisite due care upon learning of such release or threat of release. For example, where the release or threat of release is caused by an act of vandalism, the landowner may be able to assert the defense where he exercises due care and takes satisfactory precautions against foreseeable acts as discussed below.

The Conferees recognize that the due care requirement embodied in section 107(b)(3) only requires such person to exercise that degree of due care which is reasonable under the circumstances. The requirement would include those steps necessary to protect the public from a health or environmental threat. Finally, the precautions against foreseeable acts of third parties requirement of section 107(b)(3)(b) does not prevent a subsequent purchaser after contamination has occurred from claiming the defense, but only comes into play after the landowner acquires the property. Foreseeability must be considered in light of the specific circumstances of each case. The provisions of section 101(35)(B) as to "reason to know" govern the purchaser's responsibility with regard to acts of third parties prior to the purchase.

Nothing in this provision shall affect the liability of an owner or operator whose property is taken by a government exercising its eminent domain authority by purchase or condemnation. The owner or operator is not relieved of liability under this Act if he would otherwise have been liable had the purchase or condemnation not occurred. Furthermore, a government authority acquiring property by such methods shall notify, in a timely manner, the United States Environmental Protection Agency and the Department of Justice upon discovering the existence of a hazardous substance on the property. In cases involving government purchase or condemnation, the cost of response may be offset against the just compensation due to the landowner, if any.

The duty to inquire under this provision shall be judged as of the time of acquisition. Defendants shall be held to a higher standard as public awareness of the hazards associated with hazardous substance releases has grown, as reflected by this Act, the 1980 Act and other Federal and State statutes.

Moreover, good commerical or customary practice with respect to inquiry in an effort to minimize liability shall mean that a reasonable inquiry must have been made in all circumstances, in light of best business and land transfer principles.

Those engaged in commercial transactions should, however, be held to a higher standard than those who are engaged in private residential transactions. Similarly, those who acquire property through inheritance or bequest without actual knowledge may rely upon this section if they engage in a reasonable inquiry, but they need not be held to the same standard as those who acquire property as part of a commercial or private transaction, and those who acquire property by inheritance without knowing of the inherit-

ance shall not be liable, if they satisfy the remaining requirements of section 107(b)(3).

Finally, the provision makes clear that this definition does not alter the liability of any person who would otherwise be liable under this Act. If a person transfers property with actual knowledge of the release or threatened release without disclosing such knowledge, such person may not avail himself or herself of a section 107(b)(3) defense. However, transferring property with disclosure does not provide a person with a defense, if such person is otherwise liable.

SECTION 102—REPORTABLE QUANTITIES

Senate amendment—The Senate amendment contains no comparable provison.

House amendment—The House amendment requires the Administrator to promulgate regulations establishing reportable quantities for releases of hazardous substances by December 31, 1986.

Conference substitute—The conference substitute adopts the House provision as modified. The substitute requires promulgation of final reportable quantity regulations by December 31, 1986, for those hazardous substances for which proposed regulations were published on or before March 1, 1986. For all hazardous substances for which proposed regulations were not published before March 1, 1986, the President is required to publish proposed regulations not later than December 31, 1986, and promulgate final regulations not later than April 30, 1988.

SECTION 103—NOTICES; PENALTIES

Senate amendment—The Senate amendment amends section 103 to require notification of any release of a hazardous substance with a reportable quantity of one pound or less (or other quantity determined by the President to potentially require emergency response) to State and local emergency response officials identified under any local contingency plan or otherwise likely to be affected by the release.

House amendment—The House amendment makes a technical amendment to section 103 of CERCLA.

Conference substitute—The conference substitute adopts the House provision. The substitute does not make a substantive change to the notification requirements of section 103 since these matters are dealt with in title III of this bill.

SECTION 104—RESPONSE AUTHORITIES

SUBSECTION (a)(1)—RESPONSE BY POTENTIALLY RESPONSIBLE PARTIES

Senate amendment—Section 112(a) provides the President with the authority to authorize the owner or operator of a vessel or facility from which a release or threat of release emanates, or any other responsible party, to perform remedial or removal actions if the President determines that the action will be done properly.

House amendment—Section 104(b) authorizes the Administrator to allow an owner or operator or other responsible party to carry out removal or remedial actions in accordance with section 122.

The Administrator may allow the person to perform the RI/FS if (1) the person conducting the RI/FS for the responsible party is found to be qualified by the Administrator and (2) the Administrator enters into an oversight contract with any qualified, objective person to oversee and review the conduct of the RI/FS, and (3) the responsible party agrees to reimburse the Fund for any cost incurred under the oversight contract.

Conference substitute—The conference substitute provides that where the President determines that a removal or remedial action will be done properly and promptly by the owner or operator of a facility or vessel or by any other responsible party, the President may allow such person to carry out the action in accordance with section 122. Provided, however, that no remedial investigation or feasibility study (RI/FS) may be authorized except (1) where the President determines that the party is qualified to conduct the RI/FS; (2) the President contracts with or arranges for a qualified person to oversee the conduct of the RI/FS; and (3) the responsible party agrees to reimburse the Fund for any cost incurred by the Administrator under or in connection with the oversight contract. The conference substitute also provides that in no event shall a potentially responsible party be subject to a lesser standard of liability or receive preferential treatment as a response action contractor or as a person hired or retained by a response action contract or with respect to the release or facility in question.

The term "qualified person," refers to someone with the professional qualifications, expertise, and experience necessary to provide additional assurance that the President is conducting meaningful oversight of the remedial investigation and feasibility studies being performed by potentially responsible parties in accordance with section 122. The President retains the principal responsibility to properly oversee the conduct of remedial investigation and feasibility studies and the qualified person is to work for and assist the President. Any such person contracted for or arranged for should be governed by the Agency's standards of ethical conduct relating to conflict of interest.

SUBSECTION (a)(2)—PUBLIC HEALTH THREATS

Senate amendment—Section 112(a) directs the President to give primary attention to those releases which may present a public health threat.

House amendment—Section 104(a) directs the Administrator to give primary attention to those releases which the Administrator deems may present a public health threat.

Conference substitute—The conference substitute adopts the House provision, changing the term "the Administrator" to "the President" to conform to the agreement on the use of the term "Administrator." The text of this provision has been incorporated as the last sentence of section 104(a)(1).

SUBSECTION (b)—REMOVAL ACTION

Senate amendment—The Senate amendment contains no provision relating to removal actions contributing to long-term, permanent remedies.

House amendment—Section 104(c) of the House amendment specifies that any removal action undertaken by the Administrator shall contribute to the efficient performance of any long-term remedial action to the maximum extent practicable.

Conference substitute—The conference substitute adds a new section 104(a)(2) to CERCLA to provide that any removal action undertaken by the President under subsection (a) or by any other person referred to in section 122 should, to the extent the President deems practicable, contribute to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned.

The General Accounting Office (GAO) has reported that on several occasions EPA has carried out short-term removal actions without considering how such actions will contribute to the long-term performance of remedial actions at the site. To the maximum extent practicable, the Agency should avoid wasteful, repetitive, short-term removal actions that do not contribute to the efficient, cost-effective performance of long-term remedial actions. This preference for removal actions that contribute to the efficient performance of long-term remedial actions does not constitute a defense to liability under section 107(a).

SUBSECTION (c)—LIMITATIONS ON RESPONSE

Senate amendment—Section 112(b) prohibits the President from undertaking a response action under section 104 in response to a release of a naturally occurring substance in its unaltered form or altered through natural processes; from products which are part of the structure of residential buildings or businesses or community structures which result in exposure in such structures; or into public or private drinking water supplies due to the deterioration of the system through ordinary use. These limitations on response actions will not apply, however, if in the President's discretion the releases constitute a public health or environmental emergency and no other person with the authority and capability to respond will do so in a timely manner.

House amendment—Section 118(a) prohibits the Administrator from responding to releases from (1) residential or business or community structures not used for certain hazardous waste activities; (2) public water supplies due to deterioration of the system through normal use; (3) certain coal mining activities; and (4) certain naturally occurring substances. The Administrator may respond, however, if the release constitutes a major public health or environmental emergency.

Conference substitute—The conference substitute adopts the Senate provision.

SUBSECTION (d)—COORDINATION OF INVESTIGATIONS

Senate amendment—The Senate bill contains no amendment to section 104(b) requiring notice to natural resource trustees.

House amendment—Section 104(d) of the House amendment adds a new paragraph (2) to section 104(b) that directs the Administrator to promptly notify the appropriate Federal and State natural resources trustees of potential damages to natural resources resulting

from releases under investigation pursuant to section 104 and to seek to coordinate the assessments, investigations and planning under section 104 with such Federal and State trustees.

Conference substitute—The conference substitute adopts the House provision, changing "Administrator" to "President" to conform to the agreement on the use of the term "Administrator".

SUBSECTION (e)—INITIAL OBLIGATION OF FUND

Senate amendment—Section 113(a) proposes to extend the time limit for initial response actions in section 104(c)(1) from six months to one year, and to provide that the limits on initial response actions would not apply where continued response is otherwise appropriate and consistent with permanent remedy.

House amendment—Section 104(e) raises the limits on response actions in section 104(c)(1) of current law from $1 million dollars or 6 months to $2 million dollars or 12 months, respectively. The House provision also provides that the time and monetary limits on removal actions will not apply where the President determines that continued response action is otherwise appropriate and consistent with the remedial action to be taken.

Conference substitute—The conference substitute adopts the House provision.

SUBSECTION (f)—FACILITIES OWNED AND OPERATED BY STATES

Senate amendment—The Senate provision (section 115) modifies section 104(c)(3)(C)(ii) to specify that the 50 percent cost-sharing requirement (or such greater amounts as the President may determine appropriate) for response actions at facilities owned by a State or political subdivision at the time of any disposal of hazardous substances therein includes facilities that are operated by the State or political subdivision either directly or through a contractual relationship or otherwise. For the purposes of this provision, the term "facility" does not include navigable waters or the beds underlying those waters. Section 115 of the Senate bill also contains a second paragraph relating to State reimbursements for certain costs of remedial actions at facilities owned but not operated by the State.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision relating to the 50 percent cost-sharing requirement for response actions at facilities operated by a State.

SUBSECTION (g)—CROSS REFERENCE TO CLEANUP STANDARDS

Senate amendment—The Senate amendment contains no cross-reference to cleanup standards in section 104(c)(5).

House amendment—Section 104(h) proposes to modify section 104(c)(5) of CERCLA, as redesignated, to direct the Administrator to select remedial actions to carry out section 104 in accordance with section 121 of this Act (relating to cleanup standards).

Conference substitute—The conference substitue adopts the House provision, but retains the current designation of the paragraph as section 104(c)(4).

SUBSECTION (h)—STATE CREDITS

Senate amendment—Section 114 amends the last sentence of section 104(c)(3) by directing the President to credit States for amounts expended or obligated by the State or its political subdivisions after January 1, 1978, and before December 11, 1980, for any response costs covered by section 111(a) (1) or (2) and incurred at a facility or release listed pursuant to section 105(8). The Senate provision also authorizes the President to enter into cooperative agreements with the States under which the States will take response actions in connection with the releases listed pursuant to section 105(8)(B). Finally, the Senate amendment directs the President to credit certain response costs incurred by States.

House amendment—Section 104(g) directs the Administrator to grant credits to States against the share of the costs for which they are responsible under section 104(c)(3) for amounts expended by the States pursuant to agreements with EPA for remedial actions at facilities listed on the NPL. The provision also authorizes credits for expenses of certain remedial actions incurred before the listing of the facility on the NPL or before entry into the contract or cooperative agreement with EPA. Also authorized are credits for funds expended between 1978 and 1980 for cost-eligible response actions and claims for damages compensable under section 111, and certain State expenses after December 11, 1980 but before enactment of this Act. The provision authorizes the Administrator to require prior approval for expenditures made after the date of enactment as a condition of granting credit under section 104(c)(4), and addresses the use of credits to reduce all or part of the share of costs otherwise required to be paid by a State under paragraph (3).

Conference substitute—The conference substitute adopts the House amendment, as modified by deleting section 104(c)(4)(C) of the amendment relating to administrative expenses and redesignated the provision as section 104(c)(5).

Entry into cooperative agreements is within the discretion of the President. State expenditures of funds qualifying for credit towards a State share do not create any entitlement in that State to the Federal share of costs for that facility or any other facility. Nothing in this provision shall require the President to set aside or earmark funds for expenditures in any particular State to satisfy these credit provisions.

Under section 104 the President, acting through the Environmental Protection Agency or any Federal agency acting pursuant to an agreement with the Environmental Protection Agency (such as the Corps of Engineers), can fund multi-year remedial projects on an annual basis after obligating the entire cost of implementing the Record of Decision. In such a case the State may transfer the funds that it has committed to the project on an incremental basis, and be credited with interest earned prior to actual application of the funds as work progresses.

SUBSECTION (i)—TREATMENT OF CERTAIN ACTIVITIES AS MAINTENANCE OR REMEDIAL ACTION

Senate amendment—Section 117 specifies that, for the purposes of section 104(c)(3), completed remedial actions in the case of ground or surface water contamination include the completion of treatment or other measures, whether onsite or offsite, necessary to restore ground or surface water quality to a level that assures protection of human health and the environment. The operation of such measures for a period of up to five years after the construction and installation of the operation shall be considered remedial action, whereas activities required to maintain the effectiveness of such measures following that period or the completion of the remedial action, whichever is earlier, shall be considered operation or maintenance. At such time as the dedicated tax under title V, or revenues derived therefrom, cease to be available due to termination, expiration or repeal of such tax, sums recovered or recoverable under section 107 shall be available for operation and maintenance.

House amendment—Section 104(i) proposes a new paragraph (6) to section 104(c) of CERCLA specifying that, in the case of groundwater or surface water contamination, completed remedial action includes the treatment or other measures, whether taken onsite or offsite, that are necessary to restore groundwater and surface water quality to a level that assures protection of human health and the environment. Actions required to maintain such measures following the completion of the remedial action shall be considered maintenance.

Conference substitute—The conference substitute adopts the Senate provision, modifying from five years to ten years the period during which time the activities are to be considered part of the remedial action.

SUBSECTION (j)—RECONTRACTING

Senate amendment—Section 113(b) provides that nothing in the Act shall limit the President from taking such action as may be necessary to assure continuous remedial action or to institute interim remedial action when it becomes necessary to reopen bidding or otherwise recontract for further performance of the remedial action.

House amendment—The House amendment contains no provision on recontracting.

Conference substitute—The conference substitute provides a new paragraph (8) to section 104(c) of CERCLA that authorizes the President to undertake or continue whatever interim remedial actions the President determines are appropriate to reduce risks to public health or the environment where the performance of a complete remedial action requires recontracting because of the discovery of sources, types or quantities of hazardous substances not known at the time of entry into the original contract. These interim actions, however, may not exceed $2 million dollars.

This provision clarifies the President's existing authority to respond to releases of hazardous substances under section 104, although the $2 million cap on interim responses pending recontract-

ing is a new restriction. The provision is intended to address situations like the Re-solve Site at North Dartmouth, Massachusetts.

SUBSECTION (k)—SITING

Senate amendment—The Senate amendment amends section 104(c) by adding a new paragraph providing that, effective three years after enactment, the President shall not provide any remedial actions pursuant to section 104 unless the State provides assurances that there will be adequate capacity and access to facilities in compliance with the hazardous waste regulatory program under subtitle C of the Solid Waste Disposal Act for the treatment or disposal of all that State's hazardous wastes for the next twenty years.

House amendment—Section 104(f) of the House amendment modifies section 104(c)(3) of CERCLA by adding an additional requirement that States assure the Administrator of the availability of hazardous waste treatment or disposal facilities that (1) have adequate capacity to accommodate the hazardous wastes that are expected to be generated within the State within the 20-year period following the date of a contract or cooperative agreement with the Administrator; (2) are within the State or outside the State in accordance with an interstate agreement or regional agreement; (3) are acceptable to the Administrator; and (4) are in compliance with subtitle C of the Solid Waste Disposal Act.

Conference substitute—The conference substitute adopts the virtually identical House and Senate provisions requiring States to provide assurances to the President of the availability of hazardous waste treatment or disposal facilities with adequate capacity to accommodate the wastes expected to be generated within the State. The reference to "hazardous wastes" in this siting requirement is intended to cover all hazardous wastes generated within the State, not only Superfund wastes generated by response or remedial actions undertaken within the State.

SUBSECTION (l)—COOPERATIVE AGREEMENTS WITH STATES

Senate amendment—Section 119 authorizes the President to enter into a contract or cooperative agreement with any State or political subdivision which has the capability to carry out any or all of the actions authorized under section 104, as determined by the President to take such actions in accordance with section 105(8). Such cooperative agreements may reimburse State or political subdivisions from the Fund for reasonable response costs or related activities, as enumerated in the Senate provision. Any contract or cooperative agreement is subject to the cost-sharing requirements of section 104(c).

House amendment—Section 104(j) modifies section 104(d)(1) of CERCLA to provide that, where the Administrator determines that a State or political subdivision has the capability to conduct any or all actions authorized by section 104 in accordance with section 105(a)(8) and carry out related enforcement actions, the Administrator may enter into a contract or cooperative agreement with the State or political subdivision to carry out such actions. The provision directs the Administrator to make such determinations within

90 days after the Administrator receives an application for such an agreement from a State or political subdivision. The provision further specifies that any State which expended funds between September 30, 1985, and the date of enactment of this bill for response actions at any site included on the NPL and subject to a cooperative agreement under the Act shall be reimbursed for the share of costs of such actions for which the Federal government is responsible.

Conference substitute—The conference substitute adopts the House provision with the addition of Indian tribes to section 104(d)(1), as amended. A decision by the President to enter into a contract or cooperative agreement is within the discretion of the President. Included within the class of activities that may be the subject of cooperative agreements under this provision are those activities associated with the overall implementation, coordination, enforcement, training, community relations, site inventory and assessment efforts, and administration of remedial activities as authorized by this Act.

SUBSECTION (m)(1)—INFORMATION-GATHERING AND ACCESS AUTHORITIES

Senate amendment—Section 120 proposes four new paragraphs to section 104(e) pertaining to access and information-gathering. Paragraph (1) authorizes any authorized representative of the President or a State to require any person to disclose information relevant to the identity and nature of materials at a facility or the nature and extent of a release or threatened release from the facility where there is reason to believe that there may be a release or a threatened release of a hazardous substance from that facility. In addition, the paragraph requires the person to provide reasonable access to the authorized representative to inspect or copy all documents and records pertaining to such matters. The paragraph also authorizes access to certain establishments or other places or properties to inspect and obtain samples under certain conditions.

Paragraph (2) provides the terms and conditions under which the President may compel compliance with such a request for access or information. Paragraph (2) also directs courts to compel compliance with this paragraph where there is a reasonable basis to believe that there is a release or threatened release of a hazardous substance unless, under the circumstances, the demand for access or information is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law. The provision authorizes up to a $10,000 civil penalty against any person who unreasonably fails to comply with the provision of paragraph (1) or an order issued under paragraph (2).

Paragraph (3) contains a "savings" clause, while paragraph (4) details provisions relating to the terms and conditions for entry to locations and access to information properly classified to protect the national security. Paragraph (5) details the requirements applicable to any person who claims that the information sought is entitled to protection under this section.

Paragraph (6) outlines the types of information that will not be entitled to protection from disclosure under this section.

House amendment—Section 104(k) proposes to modify section 104(e) of CERCLA by redesignating paragraph (2) as paragraph (8) and by adding new subsections 104(e)(1)-(7) relating to information-gathering and access. Paragraph (e)(1) authorizes any duly authorized representative of the Administrator to exercise the authorities under paragraphs (2), (3), or (4) of this subsection in accordance with certain enumerated restrictions. Any duly designated State official under a cooperative agreement or contract may use the authorities in paragraphs (2) through (4). Paragraph (2) authorizes access to information or documents described in three subparagraphs pertaining, in general, to the nature and quantity of materials at the vessel or facility, the nature or extent of the release from the vessel or facility, and other information relating to the ability of a person to pay for or perform a cleanup. The paragraph also authorizes access at all reasonable times to inspect or copy the documents relevant to such matters. When the authorized representative requests copies of documents as authorized by this action, the person with such documents must either provide the copies or furnish the documents themselves for copying. Paragraph (3) pertains to entry, authorizing an officer or employee of the Administrator or State to enter certain vessels or facility enumerated within the paragaph. Paragraph (4) pertains to inspections and samples, authorizing any duly authorized representative of the Administrator or State to inspect and obtain samples from any vessel, facility or other location described in the paragraph. The paragraph requires that a copy of the results of any analysis of samples taken pursuant to the paragraph shall be furnished to the owner, operator, tenant, or other person in charge of the location from which the samples were obtained. Paragraph (5) outlines the authorities of the Administrator to issue compliance orders and to request the Attorney General to commence civil actions to compel compliance with such orders or requests for information or access pursuant to this section. Where there is a reasonable basis to believe that a release or threat of release may occur, the paragraph describes the actions a court shall order in any civil action to compel compliance. The paragraph authorizes a civil penalty not to exceed $25,000 for each day of noncompliance. Paragraph (6) includes a savings clause that clarifies that the subsection is not intended to preclude the Administrator from securing access or obtaining information in any other lawful manner, whereas paragraph (7) requires appropriate clearances for any officers or representatives of the Administrator to gain entry to locations and access to information properly classified to protect the national security.

Conference substitute—The conference substitute adopts the House language with the following modification. First, in paragraph (5)(B) (i) and (ii), the conference substitute includes the Senate language specifying that a court shall not take action where under the circumstances of the case the demand for access or information is arbitrary and capricious, an abuse of discretion or not otherwise in accordance with law. Secondly, paragraph (e)(7), relating to clearance, has been deleted.

SUBSECTION (m)(2)—BASIS FOR WITHHOLDING INFORMATION

Senate amendment—Section 120 proposes to add new paragraphs (5) and (6) to section 104(e) of CERCLA. Paragraph (5) details the terms and conditions under which a person required to provide information or documents under the Act may claim that the information is entitled to protection from disclosure. The Senate bill would require the person claiming such protection to show, at the time the claim is made, that the information is entitled to protection on the basis of certain criteria.

House amendment—The House amendment contains no amendment to section 104 relating to the basis for withholding information.

Conference substitute—The conference substitute adds two new subparagraphs (E) and (F) to section 104(e)(8) of CERCLA relating (1) to the basis for withholding information and (2) to information not entitled to protection under the section. The first subparagrpah conforms to the conference agreement in title III, relating to Emergency Planning and Community Right-to-Know. The second subparagraph is derived from the Senate provision with certain modifications.

SUBSECTION (n)—ACQUISITION OF PROPERTY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 104(n) proposes to add a new subsection to section 104 authorizing EPA to acquire by purchase, lease, condemnation, or otherwise any real property or interest in real property that the Adminstration determines is needed to conduct a remedial action under this Act during the remedial action itself or prior to it in conjunction with an investigation or removal action. The decision of the Administrator under this provision is discretionary. The provision allows the Administration to acquire such interest in real estate only if the State in which the interest is to be acquired assures the Administrator that the State will accept transfer of the interest following completion of the remedial action. The provision also provides that no Federal, State, or local government agency shall be liable under this Act solely as a result of acquiring an interest in real estate under this subsection. This provision does not limit the President's existing authority to acquire real property by purchase, lease or condemnation when necessary to carry out response actions authorized by section 104.

Conference substitute—The conference substitute adopts the House provision. If the President obtains access to property under section 104(e) to effectuate a response and the President determines that the response will result in the taking of private property, the President will exercise the property acquisition authority provided under this amendment to section 104. In addition, even if this authority is not exercised, persons who believe that their property has been taken by response action may seek compensation under the Tucker Act, 28 U.S.C. 1491.

SECTION 105—NATIONAL CONTINGENCY PLAN

Senate amendment.—The Senate amendment requires the President to revise the National Hazardous Substance Response Plan not later than twelve months after the date of enactment of these amendments to provide procedures and standards for remedial actions undertaken pursuant to CERCLA which are consistent with the amendments made by this Act.

This amendment requires the President by rule, not later than twelve months after the date of enactment of these amendments, to promulgate amendments to the Hazard Ranking System in effect on September 1, 1984. These amendments shall assure to the maximum extent feasible, the Hazard Ranking System accurately assesses the relative degree of risk to human health and environment posed by sites and facilities subject to review. These amendments shall take effect as of the date established by the President, not later than eighteen months after the enactment of the Superfund Amendments of 1984. The amended Hazard Ranking System shall be applied to any site or facility to be newly listed on the National Priority List after the effective date of the amendments. The Hazard Ranking System in effect on September 1, 1984, shall continue in full force and effect until the new regulations are in effect.

The Senate amendment eliminates the requirement that the National Contingency Plan include at least 400 facilities and clarify that States are allowed only one highest priority designation for the life of the list. The Senate amendment adds a new requirement to include standards and testing procedures by which alternative or innovative treatment technologies are appropriate for utilization in response actions.

House amendment.—The House amendment requires the Administrator within 18 months of the date of enactment to revise the National Contingency Plan to reflect the amendments made by this legislation.

The House amendment requires the Administrator to commence a review of the Hazard Ranking System (HRS or "Mitre Model") used to evaluate the priorities attached to Superfund sites not later than 12 months after the enactment of the Superfund Amendments of 1986. In conducting the review, the President shall ensure that the human health risks associated with contamination or potential contamination of surface water used for recreation or potable water consumption is appropriately assessed.

The House amendment provides that in conducting the Hazard Ranking System review, the Administrator must evaluate the preliminary pollutant limit value system used by the Department of Defense and compare it with the Hazard Ranking System.

The House amendment explicitly provides that the Administrator is not required to reevaluate after enactment of this Act the hazard ranking of any facility which was evaluated in accordance with the criteria under section 105 of CERCLA before such enactment.

The House amendment establishes the right of any person to petition the Administrator to conduct a preliminary assessment of the hazards to public health and the environment which are associated with a release or threatened release of a hazardous substance,

pollutant or contaminant. Within 12 months, the Administrator must complete such assessment or explain why such an assessment is not appropriate. If the preliminary assessment indicates that any such release may pose a threat to human health or the environment, the Administrator must promptly evaluate the release for possible inclusion on the National Priorities List.

The House amendment adds new criteria to the current law to be used in determining priority facilities: the damage to natural resources which may affect the human food chain and the contamination or potential contamination of the ambient air which is associated with a release or threatened release.

The House amendment also adds a new requirement to include standards and testing procedures by which alternative or innovative treatment technologies are appropriate for utilization in response actions.

The House amendment adds a new requirement that whenever there has been a significant release of a hazardous substance or pollutants and contaminants from a site which is listed by the President as a site cleaned up on the National Priorities List, the site shall be restored to the National Priorities List without application of the Hazard Ranking System.

The House amendment requires the Administrator to consider the availability of qualified minority firms. The Administrator shall describe, as part of any annual report submitted to the Congress under CERCLA, the participation of minority firms.

The House amendment allows the States to place only one highest priority site on the National Priorities List and deletes the requirement in current law that the National Priorities List contain no fewer than 400 sites to the extent practicable.

Conference substitute—The conference substitute adopts provisions from both the House and Senate amendments. The conference substitute adopts the Senate amendment requiring the President to revise the National Contingency Plan, changing 12 months to 18 months. To the extent there is an inconsistency between the current National Contingency Plan, including the National Hazardous Substance Response Plan, and the provisions or requirements of the Superfund Amendments and Reauthorization Act, this Act supersedes and controls as of the date of enactment.

The conference substitute adopts the Senate amendment requiring the President to promulgate, by rule, amendments to the Hazard Ranking System in effect to assure, to the maximum extent feasible, that the Hazard Ranking System accurately assesses the relative degree of risk to human health and environment posed by sites and facilities subject to review. The promulgation date is changed from 12 months after enactment of these amendments to 18 months and changing the effective date of these amendments from 18 months to 24 months.

This provision establishes a substantive standard for the Hazard Ranking System that, to the degree feasible, it accurately assesses relative risks to human health and the environment. This standard is to be applied within the context of the purpose for the National Priorities List; i.e., identifying for the States and the public those facilities and sites which appear to warrant remedial actions. (See "Report of the Committee on Environment and Public Works,"

Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980).) This standard does not, however, require the Hazard Ranking System to be equivalent to detailed risk assessments, quantitative or qualitative, such as might be performed as part of remedial actions. The standard requires the Hazard Ranking System to rank sites as accurately as the Agency believes is feasible using information from preliminary assessments and site inspections, such as ground or surface water, or air monitoring data or the equivalent information and identification of potentially and actually contaminated water supplies or sensitive environments. Meeting this standard does not require long-term monitoring or an accurate determination of the full nature and extent of contamination at sites or the projected levels of exposure such as might be done during remedial investigations and feasibility studies. This provision is intended to ensure that the Hazard Ranking System performs with a degree of accuracy appropriate to its role in expeditiously identifying candidates for response actions.

The review of the Hazard Ranking System needs to adequately consider the quantity, toxicity, and concentrations of hazardous constituents, which are present in any release, or threatened release; the extent of actual release and the potential for release of such hazardous constituents; and the exposures presented, or likely to be presented, to human populations and the environment, by the release or threatened release of such hazardous constituents through various routes of exposure.

Neither the revised Hazard Ranking System required by this section nor any other provision of law or regulation requires the conduct of risk assessments at unlisted or listed facilities.

The conference substitute adopts the House amendment requiring the President to ensure that the human health risks associated with contamination or potential contamination of surface water used for recreation or potable water consumption is appropriately assessed.

In conducting the review under this section, the Administrator shall evaluate the preliminary pollutant limit value system used by the Department of Defense to assess the risks of hazardous substances and compare such system with the Hazard Ranking System. In particular, the Administrator should study the effectiveness of each system in appropriately assessing the relative degree of risk to human health and the environment posed by facilities subject to each such system.

The President in conducting the review required by this provision should include the following items:

(1) an explanation of the Hazard Ranking System, including the manner in which it was developed and the method of determining the relative hazard at different facilities under the system;

(2) a determination of the relationship between the value determined for a facility under the Hazard Ranking System and the potential danger to human health and the environment;

(3) an examination, based on the determination under clause (2), of the effect of establishing a threshold value of 28.5 for facilities to be included on the National Priorities List;

(4) a determination based upon the determination under clause (2) and the examination under clause (3), of whether a new threshold value should be established for inclusion of facilities on such list; and

(5) a determination of the relationship between the value determined for a facility under the Hazard Ranking System and the types of remedial actions that are appropriate at such facility.

The conference substitute adopts the Senate amendment which provides that until the effective date of regulations revising the Hazard Ranking System, the system in effect on September 1, 1984, continues in full force and effect.

The conference substitute adopts the House amendment, as modified, which provides that the President is not required to reevaluate the hazard ranking of any facility which was evaluated in accordance with the criteria under section 105 of CERCLA before the effective date of the amendments to the Hazard Ranking System contemplated by this section.

The conference substitute adopts the House amendment establishing the right of any person to petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with a release or threatened release of a hazardous substance, pollutant or contaminant.

The conference substitute adopts the House amendment adding a new criterion to the current law to be used in determining priority facilities: the damage to natural resources which may affect the human food chain and the contamination or potential contamination of the ambient air which is associated with a release or threatened release.

The conference substitute adopts the House amendment which is similar to the Senate amendment deleting the requirement in the current law that the National Priorities List contain no fewer than 400 sites.

The conference substitute adopts the House amendment regarding the use of alternative and innovative technology.

The conference substitute adopts the House amendment requiring the relisting of sites on the National Priorities List without application of the Hazard Ranking System whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a "Site Cleaned Up To Date."

The conference substitute adopts the House amendment requiring the President to consider the availability of qualified minority firms.

SUBSECTION (g)—SPECIAL STUDY WASTES

Senate amendment—The Senate amendment to section 105 provides that, until the Hazard Ranking System is revised, special study waste sites described in section 3001(b)(2)(B) or (3)(A) of the Solid Waste Disposal Act may be listed on the National Priorities List only if the Administrator makes findings based on facility-specific data. Liability for costs, damages, or penalties may only be imposed if specific findings have been made and the Administrator

supports those findings in court. Following completion of the study and determinations required by the Solid Waste Disposal Act, if a special study waste is not a hazardous waste listed under section 3001 of the Solid Waste Disposal Act, the waste stream, or one of the constituents thereof, may not be deemed to be a hazardous substance unless such waste, at the facility in question, has one of the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act.

House amendment—The House amendment contains a provision which applies only to fly-ash and other wastes described in section 3001(b)(3)(A)(i).

The Administrator is required to revise the Hazard Ranking System (HRS) as it applies to facilities that contain substantial volumes of fly-ash and other wastes discussed in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act that relate to the combustion of coal or other fossil fuels in a manner which assures appropriate consideration of site-specific characteristics of such facilities.

Prior to the completion of the required revision of the Hazard Ranking System, the Administrator may not add to the NPL any facility that contains waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation relying principally on the volume of such waste and not on the actual concentrations of the hazardous constitutents of such waste. Nothing in this section affects EPA's authority to list or take other actions under the Act at facilities based upon the presence of substances other than waste described in section 3001(b)(3)(A)(i).

Conference substitute—The conference substitute adds a new provision to section 105 dealing with special study wastes other than wastes described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act.

Pending revision of the Hazard Ranking System, the President must consider certain factors in adding facilities at which special study wastes described in paragraphs (2), (3)(A)(ii) or (3)(A)(iii) of section 3001(b) of the Solid Waste Disposal Act are present in significant quantities. Facilities included on, or proposed for inclusion on, the National Priorities List are not subject to this provision. The President must only consider available information.

In the course of determining whether to add facilities containing special study wastes to the NPL in the interim period, if the President has sampling data from past or present on-site or off-site examination of the facility or releases from the facility available, he shall consider it.

Neither the revised Hazard Ranking System required by this section nor any other provision of law or regulation requires the conduct of risk assessments at unlisted or listed facilities.

Nothing in this amendment affects or otherwise limits the President's authority under this Act to conduct response or enforcement actions (including abatement actions under section 106(a)).

SECTION 106—REIMBURSEMENT

Senate amendment—Section 144 of the Senate amendment contains a provision that amends section 106(b) of CERCLA to author-

ize the reimbursement of potentially responsible parties for response costs under certain circumstances.

House amendment—Section 113 of the House amendment contains a provision on reimbursement comparable to that set forth in the Senate amendment. The House amendment is also drafted as an amendment to section 106(b) of CERCLA.

Conference substitute—The conference substitute adopts new section 106(b)(2) of CERCLA as set forth in the House amendment, with modifications. This new provision authorizes reimbursement for certain parties and the procedures for obtaining such reimbursement.

SECTION 107—LIABILITY

FOREIGN VESSELS

Senate amendment—The Senate amendment amends sections 107(a)(1) to strike "(otherwise subject to the jurisdiction of the United States)," making it clear that liability under CERCLA applies to releases from foreign vessels.

House amendment—The House amendment contains an identical provision.

Conference substitute—The conference substitute adopts the identical provisions of both bills.

COSTS AND DAMAGES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment amends section 107(a) to clarify that all costs incurred by the United States or a State under section 104(b) and the costs of any health assessment or health effects study carried out under the expanded health authorities provisions, are recoverable costs under section 107. In addition, the House amendment provides that amounts recoverable under section 107 include interest accruing from 90 days after the date on which an action for recovery of such amounts is filed. The rate of interest is the same as that for investments of the Fund.

Conference substitute—The conference substitute amends section 107(a) to clarify that the costs of any health assessment or health effects study carried out under section 104(i) are recoverable costs under section 107. The reference to section 104(b) costs in the House amendment was deleted, since such costs are defined as costs of response in current law. The conference substitute provides that amounts recoverable under section 107 include interest accruing from the later of the date payment is demanded in writing or the date of the expenditure concerned. The rate of interest is the same as that for investments of the Fund.

EMERGENCY RESPONSE ACTIONS

Senate amendment—The Senate amendment adds a new paragraph to section 107(d) providing that State and local governments are not liable under this Act for non-negligent actions taken in response to an emergency created by the release of a hazardous substance generated by, or from a facility owned by, another person.

House amendment—The House amendment strikes "damages" in section 107(d), inserting "costs and damages," and adding a sentence clarifying that this subsection does not affect the liability of a potentially responsible party who subsequently undertakes a response action. A new paragraph is added, providing that Federal, State, and local government agencies are not liable under this Act for non-negligent actions taken in response to an emergency created by the release of a hazardous substance from a vessel, facility, or site owned by another person. A person retained or hired by a State to take any emergency response action is treated the same as the State.

Conference substitute—The conference substitute amends section 107(d) to provide that a person will not be liable under this Act for their non-negligent actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the NCP or at the direction of an on-scene coordinator. A new paragraph is added, providing that State and local governments are not liable under this Act (other than for costs or damages due to gross negligence or intentional misconduct) for actions taken in response to an emergency created by the release of a hazardous substance generated by, or from a facility owned by, another person. Another new paragraph clarifies that this subsection does not apply to or alter the liability of any potentially responsible party who is otherwise covered by section 107(a).

The conference substitute retains the scope of the Senate version on the types of releases to which subsection (d)(2) applies. Subsection (d)(2) applies not only to emergency actions in response to releases or threatened releases of hazardous substances from a facility owned by a person other than a State or local government, but also to such actions concerning releases of a hazardous substance generated by a person other than a State or local government. If a State or local government nonnegligently causes damage in responding to an emergency arising out of the release of a hazardous substance generated by another person at a site which it controls through bankruptcy or other involuntary acquisition, it will not be liable under this section even though it is considered an "owner" of the facility because it has contributed to the release or threatened release from the facility in the course of responding to the emergency.

NATURAL RESOURCES

Senate amendment—The Senate amendment amends section 107(f) to relocate and modify the provisions of sections 111(h) of current law. Under new section 107(f)(2), the President shall designate in the NCP the Federal officials to act as trustees and to assess natural resource damages for the purposes of this Act and section 311 of the Clean Water Act. Such Federal trustees may, at the request of a State, assess natural resource damages for a State. Subsection (f)(2)(B) clarifies that the Governor may designate State officials to act as trustee and assess natural resource damages for natural resources under State trusteeship. Any determination or assessment of damages to natural resources made by a Federal or State trustee in accordance with the regulations promulgated in ac-

cordance with section 301(c) of the Act have the force and effect of a rebuttable presumption on behalf of the trustee in any adminsitrative or judicial proceeding under this Act or section 311 of the Clean Water Act. The President is required to promulgate the regulations required under section 301(c) of CERCLA not later than six months after enactment.

House amendment—The House amendment amends section 107(f) to relocate and modify the provisions of sections 111(h) of current law. Under new section 107(f)(2), the Federal officals designated to act as trustees under the NCP are to assess natural resource damages for the purposes of this Act and section 311 of the Clean Water Act. Such Federal trustees may, at the request of a State, assess natural resource damages for a State. Subsection (f)(2)(B) clarifies that the Governor may designate State officials to act as trustee and assess natural resource damages for natural resources under State trusteeship. Any determination or assessment of damages to natural resources made by a Federal or State trustee in accordance with the regulations promulgated in accordance with section 301(c) of the Act have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act or section 311 of the Clean Water Act. Section 107(f)(1) (as redesignated by this amendment) is amended to authorize the Administrator to retain, without further appropriation, sums recovered by the United States as trustee, and use such sums to restore, replace, or acquire the equivalent of injured natural resources.

Conference substitute—The conference substitute adopts the Senate amendment to section 107(f)(2) and the House amendment to section 107(f)(1), modifying it so that the trustee, rather than the Administrator, retains the recovered funds for use without further appropriation. A trustee may use recovered funds retained under this provision to defray costs expended for damage assessment. In addition, section 107(f) is amended to clarify that there can be no double recovery for the same money damages under this subsection. The conference substitute adopts the Senate provision that directed the President to promulgate the regulations for assessing damages to natural resources under section 301 of CERCLA not later than six months after enactment, but relocates it as an amendment to section 301 itself. The deadline established by these amendments differs from that currently imposed by the court in *New Jersey* v. *Ruckelshaus,* Civil Action No. 84-1668 (JWB) (D.C.N.J. 1984), solely for the purpose of allowing additional time, if necessary, for re-proposal of regulations required by section 301(c) should those initially submitted to the court be inadequate. While acknowledging the failure of the President to promulgate those regulations, this amendment does not sanction that failure or any further delay unless it is essential to assure the adequacy of the regulations. The court is to retain jurisdiction in *New Jersey* v. *Ruckelshaus* to assure compliance with not only this new provision of law, but that of the original requirement as well. Regulations were proposed under this section in December, 1985, and it may be necessary to repropose this regulation to come into conformity with the provisions of section 301(c) and the amendments to section 107(f).

FEDERAL LIEN

Senate amendment—The Senate amendment amends section 107 to provide that all costs and damages for which a person is liable to the United States under this section shall constitute a lien in favor of the United States on all real property and related rights subject to or affected by a response action. Such costs may be recovered in an action in rem in Federal district court.

House amendment—The House amendment amends section 107 to provide that all costs and damages for which a person is liable to the United States under this section shall constitute a lien in favor of the United States on all real property and related rights subject to or affected by a response action. All costs and damages for which the owner or operator of a vessel is liable to the United States under this section shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in Federal district court.

Conference substitute—The conference substitute adopts the House provision.

SECTION 108—FINANCIAL RESPONSIBILITY

Senate amendment—The Senate amendment designates acceptable alternative methods of establishing financial responsibility and authorizes the Administrator to specify policy or other contractual terms; sets out defenses available in case of direct action against an insurer arising out of a claim authorized by section 107 or 111; establishes total liability under the Act of any guarantor and provides that nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor.

House amendment—The House amendment establishes a deadline for promulgation of financial responsibility regulations; designates acceptable alternate methods of establishing financial responsibility and authorizes the Administrator to specify policy or other contractual terms; amends the existing phase-in period for imposition of financial responsibility requirements; sets out defenses available in case of direct action against an insurer arising out of vessels and other facilities; establishes total liability under the Act of any guarantor and provides that nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor.

Conference substitute—The conference substitute adopts the House provision with the following changes:

(1) Eliminates the deadline for promulgation of financial responsibility regulations.

(2) Substitutes the following for the provision regarding the total liability of guarantors in a direct action:

The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability

under section 107 for the purpose of satisfying the requirement for evidence of financial responsibility.

Section 109—Penalties

Senate amendment—The Senate amendment increases existing criminal penalties for various violations and further increases criminal penalties for subsequent violations. In addition, it establishes administrative civil penalties for certain offenses, graduated with increasing severity for subsequent violations. Administrative civil penalties may be assessed after notice and an opportunity for a hearing. District Court review of the penalty is on the record.

House amendment—The House amendment increases existing civil and criminal penalties for various violations and establishes civil penalties as supplements to some of the existing criminal penalty provisions. In addition, several new violations are made subject to civil and criminal penalties. Civil penalties are to be assessed and collected under procedures set forth in section 16 of the Toxic Substances Control Act, which requires formal administrative hearings and Court of Appeals review.

Conference substitute—The conference substitute combines provisions from the House and Senate amendments to provide increased penalties for civil and criminal violations of the law and to provide new authority to assess civil penalties administratively. Monetary fines for criminal violations will, as in the House amendment, be as set forth in the uniform criminal code. The relevant sections of the U.S. Code are currently located in title 18, sections 3623 and 3571. Potential imprisonment will be set at up to three years for first offenses, as in the House amendment, and up to five years for subsequent convictions, as in the Senate amendment. Civil penalties of up to $25,000 per day, increasing up to $75,000 per day for subsequent violations, may be assessed administratively or judicially. Penalties of up to $25,000 per violation may be assessed administratively after notice and an opportunity for a hearing, as set forth in the Senate amendment. Judicial review of such a penalty shall be in the district court and based on the record. Penalties of up to $25,000 per day, increasing for subsequent violations, may be assessed administratively after an opportunity for a formal Administrative Procedures Act hearing. Judicial review of such a civil penalty shall be in the Court of Appeals for the District of Columbia. For any given violation, the government must choose from among the three approaches included in this section: informal administrative process; formal administrative process; or judicial process. A single violation shall not be subject to multiple civil penalties. Civil penalties for failure to comply with information-gathering and access authorities can only be assessed judicially.

The conference substitute provides for criminal penalties of three years/five years for: failure to provide notice of releases under section 103 or submission of information known to be false or misleading; destruction of records in violation of section 103; and, providing false information in claims against the fund under section 112. Monetary fines are set according to the uniform criminal code provisions of Title 18, United States Code, section 3623 (or 3571 if applicable) which provide automatic fines for all offenses. As in the

House amendment, there may be an award of up to $10,000 for information leading to a conviction. Civil penalties apply for each of the following: failure to provide notice of releases as required under section 103 or submission of information under section 103 known to be false or misleading; destruction of records in violation of section 103; failure to comply with section 108 financial responsibility requirements; failure to comply with an order or request under the information-gathering and access authorities of section 104; and, failure to comply with an order, decree or agreement under section 122 (relating to settlements) or section 120 (relating to Federal facilities), including interagency agreements under section 120. The fine under section 106(b) is increased from $5,000 to $25,000.

Section 110—Health-Related Authorities

Senate amendment—The Senate amendment is drafted as an amendment to section 104(i) of current law, which established the Agency for Toxic Substances and Disease Registry (ATSDR).

Under the Senate amendment, ATSDR and EPA are jointly required to prepare a list of the hazardous substances most commonly found at Superfund sites. Within 6 months after enactment, ATSDR must list at least 100 such substances. Within 24 months after enactment, ATSDR must list at least 100 additional substances, and must list an appropriate additional number at least once every year thereafter.

The Senate amendment then requires ATSDR to prepare toxicological profiles on listed substances sufficient to establish the likely effect of each substance on human health, and to revise the profiles no less often than once every 5 years.

Where adequate information is not available on the health effects of a listed hazardous substance, the Senate amendment requires the Administrator of ATSDR to assure the initiation of a health effects research program. The Senate provision specifically outlines what should be the basic elements of such a research program, and requires that the Administrators of ATSDR and EPA coordinate the research program with the National Toxicology Program and with toxicological testing undertaken pursuant to the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

The Senate amendment expresses the sense of the Congress that the costs of the research program shall be borne by the manufacturers and processors of the hazardous substance in question. Where this is not possible, the Senate amendment establishes that the costs of the research program are defined as a cost of response under section 107 of this Act, so as to be recovered from parties responsible for the release of the hazardous substances.

The Senate amendment requires the Administrator of ATSDR to perform a health assessment for each release, threatened release or facility on the National Priorities List, and establishes a schedule for the completion of such assessments. In addition, health assessments are mandated for facilities under section 3019 of the Solid Waste Disposal Act.

The Senate amendment also establishes a process whereby individuals or physicians may petition the Administrator of ATSDR to perform health assessments. In response to a petition, the Administrator of ATSDR must either initiate the health assessment or provide a written explanation of why one is not appropriate.

The Senate amendment describes a health assessment as including preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on a number of factors, such as the nature and extent of the contamination, potential pathways of human exposure and the size and potential susceptibility of the affected community. The assessment is also required to include an evaluation of the health risks posed by all sources of the contaminants in question, including known point or nonpoint sources other than the subject site or facility, and to use appropriate data available from the Administrator of EPA. The Senate amendment further states that the purpose of a health assessment is to aid in determining whether additional health studies and medical evaluations need be undertaken.

Under the Senate amendment, the Administrator of ATSDR is required, upon completion of a health assessment, to provide the Administrator of EPA and the State concerned with the results of the assessment, together with any recommendations for further action which may be necessary at the facility.

The Senate amendment provides that the costs of performing a health assessment may be recovered as a cost of response under section 107 of this Act, where the assessment discloses exposure of a population to a relase of hazardous substances.

The Senate amendment further directs the Administrator of ATSDR to undertake pilot health effects studies and/or full-scale epidemiological studies where, in the judgment of the Administrator of ATSDR, such studies are appropriate based on the results of the health assessment or other study. In cases where a health assessment indicates a potential significant risk to human health, the Senate amendment also requires the Administrator of ATSDR to consider whether establishing a registry of exposed persons would be useful, taking into account such factors as the seriousness of identified diseases or the likelihood of population migration from the affected area.

The Senate amendment requires the Administrator of ATSDR to undertake a study and report to Congress on the usefulness of establishing a health surveillance program.

In the event that a health assessment or other study conducted under section 104(i) identifies a significant health risk to individuals exposed to hazardous substances, the Senate amendment requires the President to take whatever steps may be necessary to reduce the exposure and eliminate or substantially reduce the risk. Such steps may include providing alternate household water supplies or relocating a population.

All studies and results of research performed under the authority of this subsection (other than health assessments) are required by the Senate amendment to be peer reviewed prior to being reported or adopted. In addition, the Senate amendment authorizes the Administrator of ATSDR to establish a program for the education of physicians and other health professionals on methods of di-

agnosis and treatment of injury or disease related to exposure to hazardous substances. ATSDR is required to report to the Congress within 2 years after enactment on the implementation of the educational program.

House amendment—The House amendment repeals section 104(i) of current law, moving the health-related authorities already contained therein to a new section 116. The House amendment also adds several new health-related authorities and requirements in section 116.

The House amendment establishes the Agency for Toxic Substances and Disease Registry (ATSDR). ATSDR is required to establish a list of areas closed to the public or otherwise restricted due to contamination by hazardous substances, and, together with EPA, to prepare a list of the most commonly found hazardous substances at Superfund sites. Within 6 months after enactment, ATSDR must list at least 100 such substances. Within 24 months after enactment, ATSDR must list an additional 100 substances, and in each of the following three years, must add at least 25 more substances to the list. ATSDR is then required to prepare toxicological profiles on all the listed substances, according to guidelines developed jointly with the Administrator of EPA. The House amendment notes specifically the type of information which such profiles must at a minimum contain.

Where adequate information is not available for any hazardous substance, ATSDR must assure the initation of a research program designed to determine the health effects of such substance(s). This research program is to be coordinated between EPA and ATSDR, and may be carried out using programs already established under TSCA and FIFRA.

The House amendment requires that ATSDR perform a health assessment for each facility on the National Priorities List (NPL) which meets specified criteria. In addition, a process whereby individuals may petition ATSDR to perform a health assessment is established. Petitions must include evidence adequate to demonstrate that there has been some exposure to a hazardous substance. Within 45 days after receipt of such a petition, ATSDR must exercise one of several options, including initiating a health assessment, issuing a determination that an assessment is not necessary, or requesting more information.

The House amendment defines "health assessment" as a determination of the potential individual and population health risks posed by a facility, and sets out certain factors upon which such a determination should be based, such as the nature and extent of the contamination, potential pathways of human exposure, and the size and potential susceptibility of the affected community. Where a health assessment identifies a significant excess of disease in a population, the assessment must include, to the maximum extent practicable, an assessment of attributable risk. The purpose of a health assessment is to aid in deciding what further actions, taken either by ATSDR under the authority of this section or by EPA under its authorities under this Act, are necessary.

The House amendment further requires that, upon completion of a health assessment, ATSDR must provide the Administrator of EPA and each affected State with the results of the assessment, in-

cluding recommendations concerning the need to further reduce exposure to hazardous substances.

Under the House amendment, the costs of performing a health assessment may be recovered as a cost of response under the authority of section 107 of this Act, where the assessment discloses exposure of a population to a release of a hazardous substance from a facility.

The House amendment then directs the Administrator of ATSDR to perform pilot health effects studies or full-scale epidemiological studies where, in the judgment of the Administrator of ATSDR, such studies are appropriate based on the results of a health assessment of other study.

In any case where a health assessment or epidemiological study indicates a potential or observed significant risk to human health, the House amendment directs the Administrator of ATSDR to establish a registry of persons exposed to hazardous substances if, after evaluation, the Administrator of ATSDR determines that the registry could benefit its participants by prevention or early detection of serious adverse health effects, or by providing information not currently available on the human health effects of such exposure.

The House amendment further requires the ATSDR Administrator to establish a health surveillance program where the ATSDR Administrator has determined, based on a health assessment, epidemiological study, or exposure registry, that there exists a significant increased risk of adverse health effects in humans. The health surveillance program must include at a minimum periodic medical testing where appropriate and a mechanism to refer for treatment those individuals who test positive for diseases.

In addition, where a health assessment or other study identifies a significant risk to human health from exposure to hazardous substances, the House amendment requires the Administrator of EPA to take whatever steps may be necessary to abate the risk. Such steps may include providing alternate household water supplies or relocating the population. In cases of public health emergencies believed to be caused by exposure to hazardous substances, the House amendment directs the Administrator of ATSDR to arrange for medical care and testing to be provided to exposed individuals, and to offer assistance to any local and State health authorities providing such services.

All studies and results of research performed under the authority of this section (other than health assessments) are required by the House amendment to be peer reviewed prior to being reported or adopted. ATSDR is further required to assemble, develop where necessary, and distribute educational materials related to the human health effects of exposure to hazardous substances and methods of diagnosis and treatment of such health effects.

Finally, the House amendment makes it clear that the Administrator of ATSDR has the same authorities under this section with respect to facilities owned or operated by a department, agency or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

Conference substitute—The conference substitute follows the format of the Senate amendment in amending section 104(i) of cur-

rent law, rather than repealing section 104(i) and creating a new section.

Thus, there is no need to retain subsections 116 (a) and (b) of the House amendment, that establish the ATSDR, so these provisions were not included in the conference substitute, nor was section 116(c) of the House amendment, requiring the establishment of a list of restricted areas, because this requirement also exists in section 104(i) of current law.

The conference substitute adopts the House amendment requiring preparation of a list of substances found at Superfund sites for which toxicological profiles must be prepared, with one minor addition from the Senate provision. The conference substitute also adopts the House amendment requiring preparation of toxicological profiles, with two modifications. First, House section 116(e)(2)(C) regarding toxicological testing is deleted, and a new subparagraph (C) is inserted. New subparagraph (C) requires that, where appropriate, toxicological profiles shall contain an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans. Second, a new sentence has been added stating that any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing. It is within the discretion of the Administrator of ATSDR to determine what toxicological testing is relevant.

The conference substitute adopts the Senate amendment requiring establishment of a health effects research program, with the addition of one sentence from the House bill requiring the Administrator of ATSDR to consider recommendations of the Interagency Testing Committee established under the Toxic Substances Control Act prior to assuring the initiation of the health effects research program. The conference substitute also adopts the Senate amendment requiring coordination of the health effects research program with other such programs already established under TSCA and FIFRA. However, the conference substitute deletes the Senate provision which sets out the circumstances under which the costs associated with conducting the health effects research program may be recovered, and adopts instead new language requiring the Administrator of EPA to promulgate regulations to govern payment of such costs.

The conference substitute also adopts primarily the Senate amendment requiring the performance of health assessments, with minor and technical changes, except that the conference substitute does not include the phrase "release, threatened release, or" where it appears in the Senate language on performing health assessments at facilities listed on the NPL. This phrase is deleted since facilities listed on the NPL always include releases or threatened releases of hazardous substances.

The conference substitute adopts the Senate amendment authorizing the Administrator of ATSDR to perform health assessments upon receipt of petitions from individuals or licensed physicians to perform such assessments.

The conference substitute also adopts the Senate amendment stating the definition of a health assessment, with minor changes. The conference substitute adopts the House language stating the

purpose of health assessments, and adopts a combination of the House and Senate provisions requiring the Administrator of ATSDR to report results and recommendations upon completion of a health assessment.

A recommendation made by the Administrator of ATSDR or a State or local health official under this section does not diminish the responsibility of the Administrator of EPA to select a response action which complies with other requirements of this Act or the National Contingency Plan.

The conference substitute deletes the authority for recovery of costs associated with the performance of health assessments in both the House and Senate amendments, since that authority is covered in the conference substitute's amendments to section 107 of current law.

The conference substitute adopts the House amendment setting out circumstances under which pilot health effects studies and full-scale epidemiological studies should be performed, with the addition of one additional requirement for a letter of transmittal to accompany such study upon completion where the study has identified a significant excess of disease in a population.

The conference substitute adopts the Senate amendment establishing a registry of exposed persons, and adopts the House amendment requiring the initiation of health surveillance programs. Thus, under the conference substitute, the Administrator of ATSDR is required to establish a health surveillance program where the Administrator of ATSDR determines, based on a health assessment, epidemiological study, or exposure registry, that there exists a significant increased risk of adverse health effects in humans. In such a circumstance, the term "significant" increased risk is defined to include increased risks to individuals or the entire exposed community. Such increased risks would be determined through review of the whole body of data available to ATSDR, including any environmental or biological sampling data, as well as all available toxicologic information. To be considered a significant increased risk for adverse health effects, the health effect must be a medically (or biologically) plausible effect from exposure to the substance(s) in question.

It is important to note that the term "significant" does not necessarily mean statistically significant. In scientific terminology, the phrase statistically significant commonly refers to results that have a confidence value of 95 percent or better. There may well be instances where a health assessment, epidemiologic study or toxicological testing will not have shown statistical significance at the 95 percent confidence level, but that a health surveillance program should be initiated because the adverse health effects are so serious, or the whole body of literature strongly suggests a correlation between exposure and adverse health effects.

The conference substitute adopts a combination of the House and Senate amendments requiring the Administrator of EPA to take certain steps (such as providing alternate household water supplies or relocating a population) to abate a significant risk from exposure to hazardous substances. The conference substitute deletes the House amendment setting out the duties of the Administrator of ATSDR during public health emergencies caused by exposure to

hazardous substances, consistent with adopting the Senate approach of amending section 104(i) of current law, since this provision is already contained therein.

The conference substitute adopts the Senate amendment requiring peer review of studies and results of research conducted under this section, with the addition of one House provision setting a target for completion of the peer review. The conference substitute adopts the House amendment that requires ATSDR to develop, where necessary, and distribute educational materials, and adds authority not explicitly contained in the House amendment for ATSDR to provide direct educational services through short courses.

Finally, the conference substitute adopts the House amendment clarifying and confirming that ATSDR has the same authorities with respect to facilities owned or operated by the Federal Government as it has with respect to any nongovernmental entity.

SECTION 111—USES OF THE FUND

SUBSECTION (a)—AMOUNT OF FUND

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Subsection (a) of section 111 of the House amendment authorizes $1,830,000 for each of the five fiscal years, beginning after September 30, 1985. This amount is increased in any year by an amount equal to so much of the aggregate amount authorized to be appropriated as has not been appropriated before the beginning of the fiscal year involved.

Conference substitute—The conference substitute authorizes appropriations of $8.5 billion during a five-year period beginning on the date of enactment. This authorization also includes any funds that have been appropriated for the 1986 fiscal year pursuant to title II of Public Law 99-160.

SUBSECTION (b)—USES OF FUNDS SECTION 111(a)

Senate amendment—Section 138 of the Senate amendment authorizes the establishment of pilot programs for the removal or permanent treatment (e.g. decontamination) of lead-contaminated soil. These programs are to be conducted in one to three metropolitan areas where the threat to health due to lead contamination—particularly in children—has become acute. They are likely to be urban areas with older housing stock where an accumulation of lead exists in the soil surrounding residential dwellings or other structures with exterior, lead-based paint.

The pilot programs are designed to provide Federal and State governments with information that could serve as the basis for a future, more comprehensive response to hazardous concentrations of lead in the environment.

House amendment—Section 111(b) of the House amendment provides that the Fund may be used to make technical assistance grants under section 117(e) to groups of individuals that may be affected by releases from facilities on the National Priorities List.

Conference substitute—The conference substitute adopts both the House and Senate provisions. The Senate provision is broadened to include actions by the Administrator to remove, decontaminate or take other action with respect to soils that contain lead at the demonstration sites. The pilot projects are not limited as to time or expenditure amounts under section 104(c)(1), nor is cost-sharing from the State in which a site is located required.

SUBSECTION (c)—NATURAL RESOURCE DAMAGE CLAIMS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(f) of the House amendment limits payments from the Fund for natural resource claims to those for which the claimant has exhausted all administrative and judicial remedies to recover from potentially liable parties. The exhaustion requirement does not apply to claims for the costs of natural resource damage assessments. Natural resource claims filed after December 1, 1985, may be paid only if damage assessments have been carried out in accordance with regulations issued by the Secretary of the Interior. Claims pending as of December 1, 1985, may be paid, but the total paid for all such claims may not exceed 50 percent of the total amount claimed, as determined by the Administrator.

Conference substitute.—The conference substitute adopts the House amendment with modifications. Payments for claims filed before December 1, 1985, are not restricted. The specific requirement that claims filed after December 1, 1985, be limited to assessments carried out in accordance with Interior Department regulations is deleted. Where, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a responsible party likely to be solvent at the time of judgment, a claimant has exhausted all administrative and judicial remedies.

SUBSECTION (d)—SUBSECTION (c) AMENDMENTS

Senate amendment—The Senate amendment to subsection (c)(4) adds references to subsection (n) and section 104(i), relating to the ATSDR, and incorporates laboratory studies and health assessments.

House amendment—The House amendment modifies section 111(c) to provide that the term "health assessment" as used in paragraph (4) has the same meaning as section 116(f)(7).

Furthermore, section 111(d) of the House amendment adds the following purposes or activities for which the Fund may be used:

Petitions: Costs incurred by the Administrator in evaluating facilities pursuant to petitions submitted by any person who is or may be affected by a release or threatened release of a hazardous substance or pollutant or contaminant.

Oversight: The costs of (1) appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements where the responsible party or parties have been determined, but inadequate oversight assistance has been provided by such party or parties, and (2) costs of contracts under section 104(a)(1).

Real Estate Acquisition: Costs incurred by the Administrator in acquiring real estate or interests in real estate under authority provided in the House amendment.

Research and Development: The costs of carrying out research, development, and demonstration of alternative and innovative treatment technologies, hazardous waste research, and research at university centers.

Local Emergency Measures: Reimbursements to local governments for temporary emergency measures and protection of drinking water supplies, with not to exceed 0.1 percent of the total amount appropriated from the Fund to be used for such purposes.

Worker Training: The cost of worker training and education grants to the extent that these costs do not exceed $10 million for each of the fiscal years 1986 through 1990.

Rewards: The costs of paying awards to individuals for information leading to arrest and conviction of any person subject to a criminal penalty under the Act.

Conference substitute—The conference substitute adopts the Senate amendment to subsection (c)(4) with modifications to provide that all costs under section 104(i) can be paid from the Fund. The conference substitute adopts the House amendment in section 111(d)(2) with the following modifications. The substitute (1) incorporates the term "arrangements" into section 111(c)(8) to parallel the provisions of section 104(a)(1) and drops the language relating to inadequate oversight assistance; (2) adopts a more general reference to section 311 in section 111(c)(10); and (3) adds a new paragraph (14) relating to the lead poisoning study authorized by section 118.

SUBSECTION (e)—LIMITATION ON CERTAIN CLAIMS

Senate amendment—Section 134(b) of the Senate amendment prohibits payments from the Fund for natural resource damages in any year for which the President determines that all of the fund is needed for response to threats to public health.

House amendment—Section 111(g) of the House amendment contains a technical amendment which provides that claims against the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. The amendment limits the reference to claims to those for response costs "by any other person."

Conference substitute—The conference substitute adopts the Senate provision and deletes the House provision.

SUBSECTION (f)—WATER SUPPLIES BEYOND FEDERAL BOUNDARIES

Senate amendment—Section 140 of the Senate amendment amends section 111(e)(3) of the Act to provide that the Fund can be used to pay for alternative water supplies in cases involving federally-owned facilities, where groundwater contamination exists beyond the federal property boundary and the federally-owned facility is not the only potentially responsible party. This would include reimbursement of funds already spent by a municipality.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision.

SUBSECTION (g)—INSPECTOR GENERAL AUDITS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(h) of the House amendment replaces the provisions in current law concerning audits by Inspectors General of the agencies charged with responsibility for implementing the Superfund program. The new provision requires annual audits and submission of an annual report to the Congress summarizing the audit's findings. Each such report must include: (1) an audit of all payments, obligations, reimbursements or other uses of the Hazardous Substance Response Trust Fund to assure that the Fund is being properly administered; (2) a report on the status of all remedial and enforcement actions undertaken during the prior fiscal year; and (3) an estimate of the amount of resources, including the numbers of work years of personnel, which will be necessary for the relevant agencies to fulfill their statutory mandates.

Conference substitute—The conference substitute adopts the House amendment with modifications. The annual status report on remedial and enforcement actions and the resource estimate that were specifically assigned to the Inspector General by the House amendment is incorporated at a later point in the substitute as a general requirement for EPA's annual report. The Inspector General is to review these items in the EPA annual report. The Inspector General is also required to comply with the provisions of the Single Audit Act when conducting audits and reviews of Superfund payments and obligations.

SUBSECTION (h)—NEW SUBSECTIONS

Subsection (h) adds three new subsections to section 111 of CERCLA. Each subsection is described separately below:

SUBSECTION (h)(1)—AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

Senate amendment—The Senate amendment provides that in each fiscal year beginning in 1986 not less than 5 percent of the funds appropriated from the Fund would be directly available to the Agency for Toxic Substances and Disease Registry (ATSDR) to carry out the responsibilities assigned by ATSDR by the Act.

House amendment—Section 111(j) of the House amendment provides that for fiscal year 1986 and each fiscal year thereafter, not less than $30 million should be directly available from the Fund to the ATSDR for carrying out health effects research and public health assessment and protection activities.

Conference substitute—The conference substitute provides that not less than $50,000,000 in fiscal year 1987 and 1988, not less than $55,000,000 in 1988 and 1989 and not less than $60,000,000 in 1990 and 1991 shall be directly available to ATSDR to carry out activities under subsection (c)(4) and section 104(i).

SUBSECTION (h)(2)—LIMITATIONS ON RESEARCH AND DEVELOPMENT

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(k) of the House amendment establishes the following limitations on funding from the Fund for research and development programs:

No more than $20 million for each fiscal year 1986–90, for research, development and demonstration of innovative or alternative technologies under section 311(b);

For hazardous substance research, demonstration and training programs under section 311(a): 1986, $3 million; 1987, $10 million; 1988, $20 million; 1989, $30 million; and 1990, $35 million. No more than 10 percent of such amounts in each year may be used for training under section 311(a).

For each fiscal year 1986–90, no more than $5 million for university hazardous substance research centers under section 311(d).

Conference substitute—The conference substitute adopts the House amendment with modifications to years of authorization.

SUBSECTION (h)(3)—NOTIFICATION PROCEDURES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(c) of the House amendment modifies section 111(a)(2) of CERCLA to authorize the Administrator to require "preauthorization" of claims against the Fund. Section 111(c) of the House amendment also contains amendments to section 112 of CERCLA. Those amendments are discussed in conjunction with section 112 of the conference substitute, below. Finally, section 111(1) of the House amendment proposes a new section 111(p), titled "Notification Procedures for Limitations on Certain Payments," which requires the Administrator to notify State and local officials and other concerned persons of the limitations on payment of claims from the Fund as soon as a site is listed on the National Priorities List.

Conference substitute—The conference substitute adopts only that portion of the House amendment relating to notifying State and local officials of the limitations on paying claims against the Fund when a site is listed on the National Priorities List. This amendment does not relate to the issue of preauthorization.

The conference substitute deletes the House amendment to section 111(a)(2) of CERCLA. The conferees agree that current law is adequate as it relates to payment of claims for necessary response costs incurred by any other person as a result of carrying out the National Contingency Plan and that no amendments to section 111(a)(2) are necessary.

OTHER MONETARY AUTHORIZATIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(i) of the House amendment provides that there is authorized to be appropriated out of any money

in the Treasury to the Hazardous Substance Superfund $250 million per year for fiscal years 1986 through 1990. This amount is available only to the extent that it exceeds amounts recovered on behalf of the Trust Fund for the prior fiscal year. In addition there is authorized to be appropriated to the Fund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated as has not been appropriated before the beginning of the fiscal year.

Conference substitute—The conference substitute authorizes to be appropriated $212.5 million per fiscal year for fiscal years 1987 through 1991.

SECTION 112—CLAIMS PROCEDURE

SUBSECTION (a)—CLAIMS AGAINST THE FUND FOR RESPONSE COSTS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(c)(2) of the House amendment amends section 112(a) of the Act, which contains a 60-day presentation requirement prior to the initiation of claims against the Fund, to specify that no claim against the Fund may be considered during the pendency of a civil action brought by the claimant to recover costs which are the subject of the claim.

Conference substitute—The conference substitute adopts section 111(c)(2) and (3) of the House amendment with the following modifications. First, the reference to section 111(a) in the new section 112(a) is corrected. Second, the proviso is modified to provide that no claim against the fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.

Section 112(a) of current law contains a sixty-day presentation requirement relating to the initiation of claims against the Fund. Because of the absence of adequate guidance of the procedure for filing such claims, the failure of Federal or State natural resource trustees to comply with this requirement does not constitute a bar to the trustees from maintaining a claim against the Fund prior to December 11, 1983. The sixty-day presentation requirement has never applied to civil actions, nor is the selection of remedies authorized in section 112(a) irrevocable.

SUBSECTION (b)—PROCEDURES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(c)(3) of the House amendment proposes to raise the penalty for providing false information in a claim from $5,000 to $25,000 and strikes all of paragraphs (2), (3) and (4) of section 112(b), which contains settlement authorities and procedures for resolving disputed claims before a Board of Arbitrators. In lieu thereof, the House amendment proposes an administrative procedure by which claimants may challenge a decision of the President to reject all or part of a claim.

Conference substitute—The conference substitute adopts the House amendment to section 111(c)(3) with the following modifica-

tions. First, the modification to the penalty provision in section 112(b) is incorporated into section 109, pertaining to penalties. Finally, the conference substsitute provides that the amendments to section 112(a) shall not apply with respect to claims filed before the enactment of the subsection.

SUBSECTION (c)—STATUTE OF LIMITATIONS

Senate amendment—Section 142(b) of the Senate amendment adds a new section 113 to CERCLA which provides statute of limitations for both civil actions under the Act and claims against the Fund. This section of the conference report addresses claims against the Fund only; section 113 addresses, *inter alia,* statute of limitations for civil actions. The proposed section 113 specifies that no claim may be presented against the Fund for the costs of response unless the claim is presented within six years after the date of completion of the response action. Within the limitation period, a State or the United States may commence an action under this title for recovery of any costs at any time after such costs have been incurred. The Senate provision requires claims for natural resource damages to be initiated within six years after promulgation of regulation under section 301(c), or three years after the date of discovery of loss and its connection with the release in question, whichever is later.

House amendment—Section 112 of the House amendment proposes to amend section 112(d) of CERCLA to provide a six-year statute of limitations for claims for the recovery of costs referred to in section 107(a), running after the date of the completion of all response action. The provision also retains current law relating to the running of the statute of limitations against a minor or incompetent, as currently contained in section 112(c)(3). The House amendment does not contain a time limit for filing claims for natural resource damages.

Conference substitute—The conference substitute adopts the House amendment to section 112(d) of CERCLA with the following modification. The provision includes a new subsection (d)(2) relating to claims for the recovery of natural resources damages, which provides that no claim may be presented under this section for the recovery of damages referred to in section 107(a) unless the claim is presented within three years after the date of discovery of the loss and its connection with the release in question, or the date on which final regulations are promulgated under section 301(c), whichever is later.

SUBSECTION (d)—DOUBLE RECOVERY

Senate amendment—The Senate amendment contains no provision relating to this subject.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute provides for a new section (f) to section 112 providing that where the President has paid out of the Fund any response costs or any costs specified under section 111(c)(1) or (2), no other claim may be paid out of the Fund for the same costs. This amendment to section 112, as well as

the amendment to section 107(f), assures that there is no double recovery for natural resources damages, including the costs of damages assessment, restoration, rehabilitation, or acquisition in the case of injury to natural resources. These amendments are not intended to prohibit different claims or actions for different damages stemming from the same injury to the same natural resource. Nor are the amendments intended to affect the abilities of trustees to initiate or participate as co-claimants or co-plaintiffs where otherwise authorized to do so.

SECTION 113—LITIGATION, JURISDICTION, AND VENUE

Senate amendment—The Senate amendment proposes a number of modifications to CERCLA. First, it adds a new section 113(e) to CERCLA to clarify and confirm that nationwide service of process is available for suits instituted under CERCLA.

The Senate amendment adds a new section to CERCLA to clarify and confirm that parties found liable under sections 104, 106, and 107 of CERCLA have a right of contribution which would allow them to sue other liable or potentially liable persons. The provision also explicitly provides that parties who reach a judicially approved good faith settlement with the government are not liable for the contribution claims of other liable parties.

As to claims and actions for natural resources damages, the Senate amendment requires that claims be presented or actions commenced within three years after the discovery of the loss and its connection with the release in question or the date of enactment of this Act or within six years after the date on which final natural resource damage regulations are promulgated, whichever is later.

For response costs, the Senate amendment requires that claims be presented or actions commenced within six years after the date of completion of the response action.

The Senate amendment contains a provision which explicitly preserves the rights of minors or incompetents to file actions until such time as they become legally competent.

The Senate amendment, set forth in proposed new 113(f), provides for judicial review of the response under only three circumstances:

(1) cost-recovery actions under section 107;
(2) suits for abatement under section 106(a); or,
(3) Suits to recover penalties under section 106(b).

Judicial review is based on an administrative record developed by the President with full opportunity for potentially responsible parties and other citizens to provide comment.

Under the Senate amendment, the burden of proof is on the party challenging the response to establish that the response "was not reasonably justified under the criteria set forth in the NCP, including the cost effectiveness of such action, or that the decision was not otherwise in accordance with law." If a challenging party prevails under this standard of review it nevertheless remains accountable for the cost of that portion of the response that was reasonably justified.

Finally, the Senate amendment contains provisions on reimbursement, expedited judicial review of permitting, and selection of the circuit court of venue for actions under CERCLA.

House amendment—The House amendment contains many of the same elements as the Senate amendment. All of its provisions are added to existing section 113 of CERCLA.

The House amendment establishes a new section 113(e) regarding nationwide service of process. It also establishes a new section 113(f) for authority by settling parties to seek contribution from non-settlors. This section protects settling parties from actions for contribution by others whether the settlement is incorporated in a consent decree or an administrative order.

For natural resource damages, the House amendment in new section 113(g) of CERCLA requires that a civil action be commenced within three years after the date of the discovery of the loss or of the promulgation of natural resource damage regulations, whichever is later. It also sets forth new statutes of limitations for civil actions for the recovery of response costs.

The House amendment, set forth in new section 113(h) of CERCLA, establishes the identical three circumstances under which judicial review of the remedy is available as does the Senate amendment. In addition, it explicitly provides for five additional circumstances in which judicial review can be obtained prior to implementation of the response action.

The House amendment also contains provisions regarding intervention, judicial review and the standard thereof, the administrative record and contents thereof, and reimbursement.

Conference substitute—The conference substitute adopts the language of the House amendment with clarifications and modifications. It also incorporates specific provisions from the Senate amendment.

The conference substitute adopts the language related to nationwide service of process that was contained in the House amendment. This provision, designated new section 113(e) of CERCLA, clarifies and confirms that nationwide service of process is available for suits instituted by the United States under CERCLA. Nothing in this section diminishes any right of any other person to secure nationwide service of process under any other authority.

The conference substitute adopts new section 113(f) as contained in the House amendments, and thus provides contribution protection for those who enter into administrative settlement agreements with the government, as well as those who enter into consent decrees for settlements. In addition, the substitute makes technical and clarifying changes to this section. Finally, the substitute deletes the reference to the circumstances under which settlements can be set aside under new section 113(f)(2). This issue is now covered in new section 122(m) which deals directly with settlements.

With respect to civil actions for natural resource damages, the conference substitute adopts new section 113(g) of CERCLA as set forth in the House amendment, with clarifications and modifications. One modification, based on the Senate amendment, requires that a civil action be commenced within three years after the later of (1) the date of the discovery of the loss and its connection with the release in question or (2) the date on which final natural re-

source damage regulations are promulgated. This section further requires that civil actions for damages to natural resources generally be delayed until completion of the RI/FS at NPL sites and at certain other sites where the President is diligently proceeding with the RI/FS. The phrase "the President is diligently proceeding with a remedial investigation and feasibility study" includes cases where a potentially responsible party is performing an RI/FS under supervision of the President.

The Conferees have adopted these amendments relating to the time limits for initiating actions for natural resource damages because the ability for Federal and State trustees to pursue such claims and actions has been impaired by the failure of the President to promulgate regulations govering procedures for filing claims and assessing damages to natural resources. These amendments are intended to revive causes of action for natural resource damages that may have been foreclosed by the running of the statute of limitations relating to such actions under current law. A corresponding set of amendments in section 112 pertaining to the time limits for filing claims against the fund for natural resource damages is also intended to revive claims that may have been foreclosed.

As to the statute of limitations for civil actions for the recovery of response costs, the conference substitute adopts new section 113(g)(2) of CERCLA from the House amendment, with clarifying changes. This provision distinguishes between remedial actions and removal actions. The conference substitute also provides, as did the House amendment, for the entry of a declaratory judgment, which is to have a binding effect in future claims for future response costs as to the vessel or facility in question. This is consistent with the overall structure of CERCLA, which contemplates that the President may bring a series of claims for response costs under section 107, injunctive relief under section 106, or actions for access under section 104 with regard to a particular site or facility. If the President brings an earlier action for such claims, he is not barred in a subsequent action from bringing other claims. The doctrine of collateral estoppel remains applicable in these actions.

The conference substitute also adopts section 113(g)(3) of the House amendment, which prohibits the commencement of any action for contribution more than three years after the date of judgment in any civil action under this Act for recovery of costs or damages or more than three years after the date of entry of administrative or judicially approved settlements. Actions for indemnification incurred pursuant to new section 119 of CERCLA must be commenced within three years of the date upon which such indemnification is paid.

The conference substitute also expressly preserves, as did both the Senate and House amendments, the rights of minors and other incompetents until such time as they become legally competent or a guardian ad litum is appointed.

The conference substitute clarifies the language of new section 113(h) of CERCLA, which covers the timing of access to judicial review. It adopts the first three exceptions of both the Senate and House amendments, the fourth exception of the House amendment

and, with clarifications, the fifth exception of the House amendment.

In new section 113(h)(4) of the substitute, the phrase "removal or remedial action taken" is not intended to preclude judicial review until the total response action is finished if the response action proceeds in distinct and separate stages. Rather an action under section 310 would lie following completion of each distinct and separable phase of the cleanup. For example, a surface cleanup could be challenged as violating the standards or requirements of the Act once all the activities set forth in the Record of Decision for the surface cleanup phase have been completed. This is contemplated even though other separate and distinct phases of the cleanup, such as subsurface cleanup, remain to be undertaken as part of the total response action. Similarly, if a response action is being conducted at a complex site with many areas of contamination, a challenge could lie to a completed excavation or incineration response in one area, as defined in a Record of Decision, while a pumping and treating response activity was being implemented at another area of the facility. It should be the practice of the President to set forth each separate and distinct phase of a response action in a separate Record of Decision document. Any challenge under this provision to a completed stage of a response action shall not interfere with those stages of the response action which have not been completed.

New section 113(h) is not intended to affect in any way the rights of persons to bring nuisance actions under State law with respect to releases or threatened releases of hazardous substances, pollutants, or contaminants.

In new section 113(i) of CERCLA, the conference substitute adopts a modified version of the Senate provision that expressly provides for a right of intervention in actions commenced under the Solid Waste Disposal Act or CERCLA.

The conference substitute adopts new section 113(j) of the House amendment, which limits judicial review of the selection of a response action to the administrative record on which the selection was based. The substitute clarifies the language of the House amendment to provide that the otherwise applicable principles of administrative law will govern as to whether supplemental material may be considered by the court. The applicable standard of review is that of the House amendment, namely "arbitrary and capricious or otherwise not in accordance with law."

The conference substitute adopts new section 113(k) of the House amendment to require the President to promulgate regulations for the establishment of an administrative record, which is to form the basis for the selection of a response action. Until the promulgation of regulations under new section 113(k), the record shall consist of those materials developed under current procedures for selection of a response action. The record for a response action selected prior to implementation of these regulations shall consist of the record developed prior to such implementation. General principles of administrative law respecting such records are not affected by this provision. The conference substitute expressly provides for participation by potentially responsible parties and other citizens in the development of this record, as well as its public availability. In addition,

the President is required to make reasonable efforts to identify and notify potentially responsible parties before selection of a response action, but neither this requirement nor other provisions of the paragraph in which it is contained are to be a defense to liability.

The conference substitute sets forth the agreement on reimbursement as section 106 of the substitute.

The conference substitute incorporates the provision of the Senate amendment which requires that whenever a suit is brought under CERCLA, notice of such suit must be provided to the Attorney General of the United States and the Administrator.

The conference substitute deletes the Senate provision regarding expedited judicial review of permitting, which was included in the Senate bill as new section 113(i) of the Act. Litigation regarding permits required under applicable Federal laws for facilities that are designed to treat or dispose of hazardous wastes, particularly those from the cleanup of Superfund sites, should be given priority treatment by the courts.

The conference substitute deletes the Senate provision which would have amended existing section 113(a) of CERCLA to provide for the selection of the circuit court of venue for actions under the Act.

SECTION 114—RELATIONSHIP TO OTHER LAW

STATE FINANCING

Senate amendment—The Senate amendment strikes subsection 114(c) which addresses the right of States to impose taxes for purposes already covered by CERCLA.

House amendment—The House amendment amends subsection 114(c) of CERCLA to allow States to require contribution to a fund whose purpose is to pay for costs of response or damage.

Conference substitute—The conference substitute adopts the Senate approach. The substitute clarifies that States are not preempted from imposing taxes for purposes already covered by CERCLA.

USED OIL

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment includes an amendment to the definition of "hazardous substance" to exclude used oil that is: listed as a hazardous waste under the Solid Waste Disposal Act; treated, managed, or recycled in such a way as to remove or render harmless the hazardous constituents contained in such oil; and, managed in compliance with standards promulgated by the Administrator, which shall include the authority for the Administrator to order corrective action necessary for any release of used oil.

Conference substitute—The conference substitute replaces the House amendment with a series of new provisions relating to used and recycled oil. The amendment to section 114 of CERCLA provides that service station dealers who (i) collect for recycling, used oil that is not mixed with other hazardous substances, and (ii)

manage the recycled oil in compliance with yet-to-be-promulgated management standards under the Solid Waste Disposal Act (SWDA or RCRA) and other applicable authorities such as State or local recycling programs, will be exempted from Superfund liability for releases that might occur after they have relinquished control of the recycled oil. Liability under other laws, such as RCRA, is not affected.

"Service station dealer" is defined as any person who (1) owns or operates a filling station, garage, or similar retail establishment engaged in the business of selling, repairing, or servicing motor vehicles, (2) derives a significant percentage of the establishment's gross revenue from the fueling, repairing, or servicing of motor vehicles, and (3) accepts for collection, accumulation, and delivery to an oil recycling facility, oil that has been removed from a light duty motor vehicle, such as a passenger car, van, or small, personal-use pickup truck, or household applicance, such as a lawnmower, by the owner of the vehicle or appliance. All of these conditions must be met.

The fact that in some situations, such as in certain rural settings, no oil is presented by do-it-yourselfers for collection, accumulation, and delivery will not preclude a particular dealer from qualifying under this amendment. However, if such oil is presented, the dealer must, as a general matter, accept it to qualify for the special treatment afforded by this amendment. The requirement is that a service station dealer "accept . . . oil . . . that is presented . . .". To qualify, a dealer must be willing to accept oil from do-it-yourselfers. Conversely, a dealer who qualifies under this definition may, if he has reason to believe that a specific batch of oil has been mixed with other hazardous substances, refuse to accept that specific batch without sacrificing the coverage of this amendment.

To prevent the creation and use of "service station dealerships" as a front for hazardous waste management firms or commercial generators of hazardous substances that want the benefit of this exemption from liability, a significant percentage of the business' gross revenue must be derived from the fueling, repairing, or servicing of motor vehicles. Business operations, such as large retail establishments or car and truck dealerships that have a legitimate, commercial automotive service component, are intended to be covered by this definition. However, a retail establishment that does not derive revenue from fueling, repairing, or servicing motor vehicles does not qualify under this definition. To the extent establishments that do not qualify under this definition produce large quantities of used oil, they are industrial generators and are to be treated like other generators. The President is directed to further define in regulations what constitutes a "significant percentage."

Some government agencies, in an attempt to encourage do-it-yourselfers to recycle their oil rather than dispose of it improperly, have established collection facilities to accept delivery of small quantities of used oil from individuals. Such facilities that are established solely for this purpose will qualify as a "service station" under this amendment.

Also included in the definition of "service station dealer" are owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver do-it-yourselfer oil

to oil recycling facilities. Such "dealers" are included in the definition only with respect to the small quantities of used oil collected from individual do-it-yourselfers. The special treatment afforded by this amendment does not extend to the collection of commercial or industrially produced used oil.

This amendment becomes effective on the effective date of EPA's RCRA used oil regulations. Such regulations must include a requirement that owners or operators conduct corrective action to respond to releases of recycled oil. The Agency shall, in conjunction with this rulemaking, provide notice to service station dealers all across the country of this amendment and explain what each dealer must do to qualify for the special treatment afforded by this amendment.

As noted above, the Agency is in the process of developing management standards and regulations for used oil under section 3014 of RCRA. The Agency is reportedly considering a regulatory approach that would regulate all used and recycled oil but would not list "recycled oil" as a hazardous waste. If such an approach is selected, RCRA provisions regarding criminal penalties and the authority for EPA to delegate responsibility for the regulatory program to the States will not, under the terms of RCRA, extend to recycled oil. To avoid such a result, the conference substitute includes in section 205 (relating to underground tanks) an amendment to make RCRA's criminal penalty provisions applicable to persons who improperly manage used oil that is regulated but not listed as a hazardous waste under RCRA. Similarly, EPA is given the authority to delegate such a regulatory program to the States. These amendments do not indicate a Congressional preference for any particular regulatory approach. They are included here to correct potential deficiencies in the RCRA regulatory program. These amendments are not intended to influence or prejudge the outcome of the ongoing regulatory process under RCRA.

While the pressures to recycle waste oil for energy conservation and economic purposes have eased recently, the pressures to safely manage such used oil and to prevent environmental pollution are ever growing. America's used oil recycling system handles approximately 57 percent of the more than one billion gallons of used oil generated each year. The balance of the used oil is disposed of improperly—into sewers, backyards, or into the trash which eventually winds up in municipal landfills.

The current used oil recycling system in this country depends, in large measure, on volunteers. These include small business owners, such as service station dealers, who perform a community service by collecting used oil from do-it-yourself oil changers and delivering such oil to recyclers. The volume of waste involved and the connection with the problem of properly managing household hazardous waste are just two examples of the factors that make the subject of this amendment unique.

Used oil, when properly recycled and managed, is a valuable resource. However, a number of factors, such as lower prices for virgin oil and fear of liability under Superfund or the Solid Waste Disposal Act, have recently resulted in a reduced demand by commercial users of recycled oil. To the extent such a reduction in demand disrupts the entire chain of commerce in recycled oil and

leaves numerous households with no safe outlet for the oil from do-it-yourself automobile oil changes, the Federal government can and should, as a consumer, help to rectify this problem.

As set forth in section 6002(c)(2) of the Solid Waste Disposal Act, Federal agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuels derived from solid waste as a primary or supplementary fuel are required to use such capability to the maximum extent practicable. This includes recycled oil. The Administrator of EPA should work with these other agencies and, through the use of memoranda of understanding or other appropriate documents, assure that section 6002(c)(2) is being complied with, particularly with respect to the purchase and use of recycled oil.

This legislation includes an amendment to subtitle I of the Solid Waste Disposal Act which establishes a response program for leaks from underground storage tanks. Such tanks containing used oil which has not been mixed with other hazardous substances would generally fall within the meaning of petroleum tanks under the subtitle I response program. In responding to releases from such underground tanks containing used oil which has not been mixed with hazardous substances, the EPA should use the authorities of subtitle I rather than authorities under CERCLA or other corrective action authorities under Subtitle C of the Solid Waste Disposal Act. The presence of hazardous substances in used oil that result from the normal use of the oil (and not from mixing the oil with solvents or other hazardous substances) shall not be reason for EPA to disqualify a tank as eligible for response under the subtitle I response program. In most cases, releases from tanks containing used oil would not rise to the priority level necessary to be listed on the National Priorities List for CERCLA response. The subtitle I response program, financed from a separate source of revenue and designed for response to petroleum releases, is intended to assure a rapid and effective response to releases from underground storage tanks, including tanks which store used oil.

Section 115—Delegation; Regulations

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment authorizes the President and the Administrator of the EPA to delegate authorities in order to carry out the provisions of title I of CERCLA. The amendment also authorizes the Administrator of EPA to issue any regulations necessary to carry out the provisions of CERCLA.

Conference substitute—The conference substitute adopts no amendment to section 115 of CERCLA.

Section 116—Schedules

Senate amendment—The Senate amendment contains no provision on schedules.

House amendment—Section 104(n) of the House amendment adds a new subsection 104(i) that establishes a mandatory schedule for response actions and other activities under CERCLA. The schedule

contains target dates and objectives for completing remedial assessments, for listing facilities on the National Priorities List, for commencing remedial investigations and feasibility studies, for commencing remedial actions themselves, and for completing remedial actions at existing NPL facilities.

Conference substitute—The conference substitute provides for a new section 116 of CERCLA, titled "Schedules." Subsection (a) establishes as a goal of the Act that, to the maximum extent practicable, the President shall complete preliminary assessments of all facilities that are contained at the date of enactment in the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS). A preliminary assessment of those facilities is to include a statement as to whether a site inspection is necessary and by whom it should be carried out. The conference substitute also establishes as a goal of the Act that, not later than January 1, 1989, the President shall ensure the completion of site inspections at all facilities for which the President has stated a site inspection is necessary. Subsection (b) provides that within four years after enactment, each facility in CERCLIS shall be evaluated if the President determines that the evaluation is warranted on the basis of a site inspection or preliminary assessment. In a case of a facility listed in CERCLIS after enactment, the facility shall be evaluated within four years after the date of listing if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment. Based on information supplied by the Administrator of the Environmental Protection Agency, it is expected that the President will have added, or proposed to add, between 1,600 and 2,000 sites to the National Priorities List. To the maximum extent practicable, the President should undertake CERCLIS evaluations at an annual rate sufficient to achieve this goal by 1988.

Subsection (c) provides that, where any of the goals established by subsection (a) or (b) are not achieved, the President shall explain why such action was not completed by the specific date. Subsection (d) requires the President to assure that no fewer than 275 remedial investigations and feasibility studies are commenced for facilities listed on the NPL, in addition to those commenced prior to the date of enactment of this Act within 36 months after enactment. Where the President fails to meet the 275 RI/FS target, no fewer than an additional 175 RI/FSs shall be comenced within four years after enactment; an additional 200 RI/FSs within five years after enactment; and a total of 650 RI/FS within five years after enactment.

Subsection (e) requires the President to assure that substantial and continuous physical on-site remedial action commences at facilites on the NPL, in addition to those facilities on which remedial actions has commenced prior to the date of enactment of these amendments, according to the following schedule: 175 facilities during the first 36 months after enactment; and 200 additional facilities during the following 24 months.

SECTION 117— PUBLIC PARTICIPATION

Senate amendment—The Senate amendment requires that, before the United States or a State selects a remedial action or enters into a convenant not to sue or to forbear from suit or otherwise settle or dispose of a claim under the Act, several procedures must be followed to allow the public to participate prior to final selection or entry. The public must be given notice of such proposed action, opportunity for a public meeting in the affected area, and a reasonable opportunity to comment. Notice must be accompanied by a discussion and analysis sufficient to provide a reasonable explanation of the proposals considered.

The Senate provision also amends section 111(c) of CERCLA to include the costs of technical assistance grants under the purposes for which the President is authorized to use the money in the Fund. Payment of such costs is subject to amounts as are provided in appropriations acts and shall be in accordance with rules promulgated by the President. Such grants may be made to those potentially affected by a release or threatened release at any facility listed on the National Priorities List, and may not exceed $75,000 per grant. These grants may be used to obtain technical assistance in interpreting information about the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at a facility.

House amendment—The House amendment requires either the Administrator or State, as appropriate, to take steps before adopting any remedial action plan. The first step is publishing a notice and brief analysis of the plan and making the plan available to the public. This notice and analysis must include sufficient information necessary to provide a reasonable explanation of the proposed plan. The second step is providing reasonable opportunity for submission of written and oral comments, and an opportunity for a public meeting at or near the facility in question, about the proposed plan and any waivers of requirements granted under section 121 of the House amendments relating to cleanup standards. The Administrator is required to keep a transcript of such a meeting and to make this transcript available to the public.

House amendment also requires that notice of the final remedial action plan be published and that the plan be made available to the public before commencing any remedial action. This final plan must be accompanied by a discussion of any significant changes in the proposed plan, and the reasons for such changes, as well as a response to each of the significant comments, criticisms, and new data submitted in oral or written presentations in accordance with the requirements described above.

After adoption of a final remedial action plan, if any remedial action is taken, if any section 106 enforcement action is taken, or if any settlement or consent decree under section 106 is entered into, and if such action, settlement or decree differs in any significant respects from the final plan, the Administrator is required to publish an explanation of the significant differences and the reasons such changes were made.

The term "publication" includes, at a minimum, publication in a major local newspaper of general circulation. In addition, the House amendment requires that each item developed, received, published, or made available to the public pursuant to this amendment must be available for public inspection and copying at or near the facility in question.

The House amendment authorizes the Administrator, in accordance with rules promulgated by the Administrator, to make technical assistance grants available to any group of persons that may be affected by a release or threatened release at any facility listed on the National Priorities List. The purpose of these grants is to enable the group to obtain technical assistance to review and assess data and information that has been prepared by the Administrator and that is required to be published under the previously described requirements of this amendment.

These grants may not exceed $25,000 for a single recipient, unless the Administrator waives this limit. The Administrator may waive this dollar limit in any case where such a waiver is necessary to carry out the purposes of this subsection on grants.

Conference substitute—The conference substitute adopts the House amendment's provisions on public participation, with some modifications. One such modification is the explicit statement that a State or the President is required to keep a transcript of the public meeting pursuant to section 117(a)(2) and to publish the explanation of significant differences between the final plan and any remedial action, settlement, or decree as required by section 117(c). In the House amendment, only the Administrator was explicitly made subject to these requirements.

The conference substitute adopts a combination of the House and Senate provisions establishing a technical assistance grants program for use at National Priorities List sites. This program is to be a regular part of the Superfund program, and the President shall not refuse to fund the technical assistance grants program, or any specific application for a grant, on the ground that there has been no specific line item appropriation. The conference substitute adopts the Senate amendment's statement that the grants may be used for technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection, and construction of remedial action, operation and maintenance, or removal action at such facility. Such grants are not intended to be used to underwrite legal actions. However, any information developed through grant assistance may be used in any legal action affecting the facility, including any legal action in a court of law.

The conference substitute states that the grant amount may not exceed $50,000 for a single grant recipient. As in the House amendment, however, the President may waive this dollar limitation. The conference substitute states that as a condition of the grant, each recipient must contribute at least 20 percent of the total costs of technical assistance for which the grant is made. This condition may be waived by the President if the grant recipient demonstrates financial need and that the waiver is necessary to facilitate public participation in the selection of remedial action at the facility.

The conference substitute states that not more than one grant under section 117(e) may be made with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action. A recipient therefore is eligible for multiple grant awards and can seek additional grants at each stage of activity for which grants may be made, including, but not limited to, such stages as remedial investigation and feasibility study, remedial design, or other appropriate stages.

SECTION 118—MISCELLANEOUS PROVISIONS

HIGH PRIORITY FOR DRINKING WATER SUPPLIES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment adds a new section 118 to CERCLA that would require the Administrator to give high priority to facilities where the release has resulted in the closing of drinking water wells or has contaminated a sole or principal drinking water source designated under the Safe Drinking Water Act.

Conference substitute—The conference substitute adopts the House amendment with a minor modification. The phrase "a sole or principal drinking water source under the Safe Drinking Water Act" has been replaced with the phrase "a principal drinking water supply" in order that the EPA Administrator not be constrained in implementing this provision to existing interpretations of "sole or principal drinking water sources" under the Safe Drinking Water Act.

RADON-CONTAMINATED SOIL

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a provision directing the EPA Administrator to make a $7.5 million grant from Superfund at a 100 percent Federal share to the State of New Jersey for the transportation and temporary storage of radon contaminated soil.

Conference substitute—The conference substitute adopts the House provision. The conferees intend that no action be taken beyond temporary storage of these materials without full and complete opportunity for public notice and comment, including concerned persons in nearby States. Action under this section is subject to sections 117 and 121.

UNCONSOLIDATED QUATERNARY AQUIFER

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a provision prohibiting any person from locating a landfill over the Unconsolidated Quaternary Aquifer, or placing solid waste in a landfill over such aquifer.

Conference substitute—The conference substitute adopts the House provision.

SKILLED PERSONNEL STUDY

Senate amendment—The Senate amendment contains no comparable provision.

House. amendment—The House amendment contains a provision directing the Comptroller General to conduct a study of the problem of shortages of skilled personnel in EPA to carry out response actions under CERCLA.

Conference substitute—The conference substitute adopts the House provision with minor modifications.

NONAPPLICABILITY OF STATE REQUIREMENTS

Senate amendment—The Senate amendment contains no comparable provison.

House amendment—The House amendment contains a provision limiting the applicability of State and local requirements to certain transfers.

Conference substitute—The conference substitute adopts the House provision with the clarification that the provision applies only to waste materials from the McColl Site in Fullerton, California.

LEAD POISONING STUDY

Senate amendment—Section 121 of the Senate amendment contains a provision directing the Administrator of the Agency for Toxic Substances and Disease Registry, in consultation with the EPA Administrator, to submit a report on the nature and extent of lead poisoning in children from environmental sources.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision with minor modifications.

FEDERALLY LICENSED DAMS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 101 of the House amendment contains a provision which would effectively amend the definition of "Owner and operator" in CERCLA to exclude certain federally licensed dams.

Conference substitute—The conference substitute adopts the House provision with a clarification that the provision applies only to the Milltown Dam in the State of Montana.

COMMUNITY RELOCATION

Senate amendment—Section 105 of the Senate amendment contains a provision amending the CERCLA definition of the terms "remove" and "removal" to include certain costs with respect to community relocation.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision with minor modifications, including a limitation expressly restricting the applicability of the provision to any dioxin site in Missouri at which a decision as to temporary or permanent relocation has been made or is under active consideration as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986. These sites include: Quail Run, Minker Stout/Romaine Creek, Piazza, Castlewood and Times Beach.

LIMITED WAIVERS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 121 of the House amendment contains a provision authorizing a State, if certain conditions are met, to waive any permit requirements under subtitle C of the Solid Waste Disposal Act which would otherwise be applicable in the case of remedial actions specifically involving mobile incinerator units.

Conference substitute—The conference substitute adopts the House provision with several modifications, including (1) a requirement that the EPA Administrator approve the waiver, and (2) a limitation expressly restricting the applicability of the provision to the State of Illinois.

JOINT USE OF TRUCKS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 216 of the House amendment contains a provision requiring the EPA Administrator, in consultation with the Secretary of Transportation, to conduct a study on trucks used for transportation of both hazardous and non-hazardous materials.

Conference substitute—The conference substitute adopts the House provision.

RADON ASSESSMENT AND MITIGATION

(For a discussion of the provisions relating to radon assessment and mitigation, see the portion of the Statement of Managers relating to title IV of the bill.)

GULF COAST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision directing the EPA Administrator to establish a hazardous substance research, development, and demonstration center in Jefferson County, Texas, for the purpose of conducting research to aid in more effective hazardous substance response and management throughout the Gulf Coast. It is the intent and expectation of the

Conferees that the Center be located at Lamar University in Beaumont, Texas. Funds under section 311 of CERCLA may be used to carry out this provision. In order to carry out the purposes of this Center, the Center can make grants, accept contributions, and enter into agreements with universities located in Texas, Louisiana, Mississippi, Alabama, and Florida. In carrying out its responsibilities, the Center is not limited to working with universities; it may also negotiate arrangements with Federal and State agencies and industry.

RADON PROTECTION

Senate amendment—Section 156 of the Senate amendment contains a provision expressing the sense of Congress that the President, in selecting response actions for facilities on the NPL, may use innovative and alternative methods which protect human health and the environment.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision.

SPILL CONTROL TECHNOLOGY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision authorizing the Department of Energy's Office of Fossil Energy to develop, implement and manage a research and development program, and a testing and evaluation of response technologies program related to hazardous substance spills. These programs are to use the Liquefied Gaseous Fuels Spill Test Facility at the Frenchman Flat site.

The Conferees took this action after learning of the unique capabilities and the strong support the Department of Energy has for this site. At the same time, the Conferees are concerned that this user-sponsored facility may be vastly under-utilized when there are no formal industry commitments to use the facility.

Because the site has the potential to assist other hazardous substance related research, testing and evaluation activities, the Conferees believe that the Department of Energy's Office of Fossil Energy should, to the extent practicable, coordinate with the U.S Environmental Protection Agency's Office of Emergency and Remedial Response and the Department of Transportation. In addition, the Department of Energy is directed to enter into contracts and grants with a non-profit organization in Albany County, Wyoming. It is the intent and expectation of the Conferees that the Department of Energy enter into grants and contracts with the Western Research Institute to provide the necessary technical and analytical support.

PACIFIC NORTHWEST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision directing the EPA Administrator to establish a hazardous substance research, development, and demonstration center for the purpose of conducting research to aid in more effective hazardous substance response in the Pacific Northwest. It is the intent and expectation of the Conferees that the Center be located at the Battelle Memorial Institute Laboratories in Benton County, Washington, and Clallam County, Washington. In carrying out its responsibilities, the Center is not limited to working with universities; it may also negotiate arrangements with Federal and State agencies and industry. In addition, the EPA Administrator and the Secretary of Energy are authorized to enter into interagency agreements with one another for the purpose of providing research into alternative and innovative technologies to characterize and assess the nature and extent of hazardous waste (including radioactive mixed waste) contamination at the Hanford site in the State of Washington.

SILVER CREEK TAILINGS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision which has the effect of removing the Silver Creek Tailing site in Utah from the list of sites recommended for inclusion on the NPL, unless the President determines, upon specific site data not used in the proposed listing of such site, that the site meets the requirements of the Hazard Ranking System or any revised Hazard Ranking System.

SECTION 119—RESPONSE-ACTION CONTRACTORS

Senate amendment—The Senate amendment contains two provisions directly related to the status of contractors who are engaged by Federal or State governments for the purpose of undertaking responses under CERCLA.

The first of these two provisions is section 104 of the Senate amendment, which proposes to amend the definition of "owner or operator" contained in section 101(20) of CERCLA. The definition would be modified to exclude response-action contractors from liability under CERCLA except to the extent that there is a release "primarily caused by the activities of such person."

The second provision is section 152 of the Senate amendments, which deals with the circumstances under which contractors would be indemnified for liability which might arise under State law or Federal laws other than CERCLA. Section 152 mandates indemnifi-

cation against damages arising from the application of a strict l ability standard and authorizes indemnification for damages ari ing based on a negligence standard.

The Second Senate amendment contains no provisions relating t contractor competition and does not preempt State law with r spect to contractor liability.

House amendment—The House amendment contains provisior directly related to the liability and indemnification of respons action contractors under both Federal and State laws, as well a one dealing with contractor competition. The term "response actio contractor" as used in this section for both liability and indemnif cation purposes, covers any contractor who provides any "evalu tion, planning, engineering, surveying and mapping, design, cor struction, equipment, or any ancillary services thereto for such fa cility".

Section 119 of the House amendment eliminates liability unde any State or Federal law for damages resulting from the non-negl gent actions of response action contractors. It also authorizes, i subsection (c), the indemnification of such contractors in the ever they are held liable for negligence, provided certain enumerated re quirements are met. Subsection (f), relating to competition amon contractors, prohibits denial of the right to bid on response actio contracts on the grounds of certain Federal requirements whic might otherwise be applicable.

Conference substitute—The conference substitute adopts th House amendment with modifications.

The first modification to new subsection 119 provides that re sponse action contractors shall not be liable except for their ow negligence under CERCLA or any other Federal law for injuries costs, damages, expenses, or other liability for any release o threatened release of a hazardous substance, pollutant or contami nant with respect to which it is a response action contractor. How ever, this section does not affect the liability of any person unde any warranty under Federal, State, or common law.

For purposes of Federal law, and in recognition of the inability o contractors to obtain insurance in the current market as well a their essential role in responding to releases caused by others, th conference substitute provides a standard of liability based on neg ligence. Liability which might arise under non-Federal laws, how ever, is untouched by the conference substitute. The existing stand ard of liability for responsible parties under CERCLA is main tained. The conferees hope that this amendment will induce State to deal with the question of liability within their own borders. Th conferees urge States to take note of the Federal standards an review their own standards of liability.

The President, under specific circumstances and subject to re quirements as set forth in the House amendment, may enter int indemnification agreements with response action contractors for li ability due to negligence. Indemnification may not be provided however, for liability arising out of the application of a standard o strict liability. The President shall not set limits and deductible for indemnification under this provision so that they are at such unreasonable levels so as to make the indemnification agreemen worthless.

The costs of indemnification are costs of response for purposes of CERCLA, and thus are costs recoverable under CERCLA. Under subsection 119(d) a responsible party may not be considered a response action contractor with respect to a release for which it is potentially liable under section 107. This constraint applies to both liability and indemnification. Also, responsible parties are barred from raising the third-party defense contained in section 107(b)(3) in cases where the release resulted from the acts or omissions of a response action contractor.

As a general rule, the President shall not participate directly in the defense of response action contractors in actions for claims subject to indemnification under this provision. However, the President retains the right to control the defense and settlement actions subject to indemnification agreements. In deciding whether to participate in such defenses, the President shall avoid any situation which places the executive branch in a conflict of interest in defending such suits.

The selection of response action contractors is subject to the generic requirements of otherwise applicable Federal selection procedures when such contracts are negotiated by Federal agencies.

Section 120—Federal Facilities

Senate amendment—The Senate amendment reaffirms that except for any requirements relating to bonding, insurance, or financial responsibility, all provisions of CERCLA applicable to private facilities are applicable to Federal agencies in the same manner and to the same extent.

The Senate amendment requires the Administrator to establish a special Federal Agency Hazardous Waste Compliance Docket containing all information submitted under Section 3016 of the Solid Waste Disposal Act and notice of each subsequent action taken under this Act with respect to the facility. Periodic updates of the Docket are required every three months by publication in the Federal Register.

The Administrator must assure that a preliminary assessment is conducted for each facility on the Docket within eighteen months after enactment. Where appropriate, following the preliminary assessment, the Administrator must complete the evaluation and listing of such facilities on the National Priorities List within twenty months after date of enactment.

Within six months after inclusion on the National Priorities List, each agency is to enter into an agreement with the Administrator and appropriate State authorities under which the agency will carry out a remedial investigation and feasibility study for the facility no later than six months after completion of the RIFS. The Administrator is required to enter into an agreement with each agency providing a schedule for the expeditious cleanup of the facility. The Senate amendment provides that substantial continuous physical on-site remedial action must be commenced at such facility which is the subject to an agreement within twelve months after completion of remedial design.

The Senate amendment also provides that unless the Administrator has entered into a memorandum of understanding with the

head of a Federal agency, the concurrence of the Administrator shall be required for the selection of appropriate remedial action and the administrative order authorities of Section 106(a) are delegated to the Administrator.

Each agency is required to complete cleanup as expeditiously as practicable after the date of the interagency agreement and to include in its annual budget submissions to the Congress a request for funding adequate to complete cleanup, and a review of alternative agency funding which could be used to provide the costs of cleanup.

The contents of each interagency agreement shall include a review of alternative remedial actions and selection of a remedial action plan by the Administrator, a schedule for completion, and arrangements for long-term operation and maintenance.

The Senate amendment requires that following approval of an agreement between the Administrator and another potentially responsible party to properly perform a remedial investigation and feasibility study or remedial action at the Federal facility within the prescribed deadlines, such agreement must be entered in the appropriate United States district court as a consent decree under Section 106 of this Act.

The Senate amendment explicitly provides for State and local participation in the planning, formulation and selection of the remedial action by the Administrator at Federal facilities.

The President may exempt any facility from compliance with guidelines, rules, regulations, or criteria if he determines it is in the paramount interest of the United States. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as part of the budgetary process and the Congress has failed to make available the requested appropriation.

The Senate amendment provides the authority for the head of each agency to compromise or settle any claim or demand under this Act arising out of activities of his agency, where such settlement is $25,000 or less.

House amendment—The House amendment provides that each Federal agency is subject to and must comply with this Act. It also provides that, except for financial responsibility requirements, all guidelines, rules, regulations and criteria applicable to preliminary assessments, to evaluations pursuant to the National Contingency Plan, to inclusion on the National Priorities List, and to remedial actions at facilities where hazardous substances are located shall also be applicable to facilities which are owned or operated by the Federal government. State laws concerning removal or remedial actions are made explicitly applicable to response actions undertaken at facilities owned or operated by the Federal government which are not on the National Priorities List.

The Administrator must establish a special Federal Agency Hazardous Waste Compliance Docket for each department, agency, or instrumentality of the United States. The Docket is required to contain information submitted by each Federal agency under Section 103 of this Act, Sections 3005 or 3010 of the Solid Waste Disposal Act, and the inventory required by Section 3016 of that Act, including information on off-site contamination. Periodic updates of

the Docket are required every six months by publication in the Federal Register.

The Administrator is required to evaluate each facility included in the Docket not later than January 31, 1987, where such evaluation is warranted on the basis of a site inspection or preliminary assessment. Any State Governor can obtain an evaluation of any facility included in the Docket. Facilities meeting the criteria for inclusion on the National Priorities List must be included within twelve months after evaluation.

For any facility listed on the National Priorities List, a remedial investigation and feasibility study must be commenced by the Federal agency, in consultation with the Administrator, within six months. Thereafter, within 180 days of completion of the RIFS, the head of the Federal agency must enter into an interagency agreement with the Administrator for expeditious completion of all necessary remedial action. Commencement of substantial continuous physical on-site remedial action is mandated at each facility not later than fifteen months after completion of the investigation and study.

The contents of each interagency agreement shall include a review of alternate remedial actions and selection of a remedial action plan by the Administrator, a schedule for completion, and arrangements for long-term operations and maintenance.

The Administrator is required to publish regulations within eighteen months requiring notice of hazardous substance storage, release, or disposal activities on property transferred by the Federal government and deeds transferring real property owned by the United States must contain certain covenants and other information.

The House amendment affirms that the corrective action requirements of the Solid Waste Disposal Act apply to Federal facilities and nothing in this section affects the obligation of Federal agencies to comply with such requirements.

To protect the national security interests at a Department of Defense or Department of Energy facility, the President is authorized to grant an exemption from any requirement of certain titles of the Superfund Amendments and Reauthorization Act of 1986 which may not exceed one year per issuance. Notification must be provided to the Congress within thirty days of the President's issuance of an exemption order. Requirements of the Atomic Energy Act concerning the handling of restricted data and national security information are made applicable to the grant of access to classified information.

Certain Department of Energy facilities in the State of Missouri were provided a limited exemption from the requirements of Section 120 where a response action plan was under development.

Conference substitute—The conference substitute adopts provisions from both the House and Senate amendments.

The conference substitute adopts the House provision requiring the application of the Act to the Federal government with the modification that the subsection not apply to requirements pertaining to bonding, insurance, or financial responsibility.

This provision clarifies that all guidelines, rules, regulations and criteria promulgated pursuant to CERCLA must be complied with

by all Federally-owned or operated facilities unless specifically exempted by this Act. Federal agencies must comply with all procedural and substantive provisions of the National Contingency Plan.

The conference substitute adopts the Senate amendment establishing the Federal Agency Hazardous Waste Compliance Docket modified by House language adding information submitted by each agency under Sections 3005 or 3010 of the Solid Waste Disposal Act and under Section 103 of this Act, as well as information on off-site contamination under Section 3016 of SWDA. Following notification under Section 103, where the EPA Administrator concurs that a response to source, special nuclear or by-product material (as defined by the Atomic Energy Act) is being conducted in accordance with the National Contingency Plan under other Federal statutues, docketing under subsection (c) is not required.

Periodic updates of the docket are required every six months as provided in the House amendment.

The conference substitute adopts the Senate amendment relating to assessment and evaluation modified to apply to the entire docket and substituting thirty months in lieu of twenty months as the time frame for completion of evaluation and listing. The provision requires placement of all qualifying Federal facilities on the National Priorities List no later than 30 months after the date of enactment. This deadline is intended to be an outside limit and to establish the latest date on which facilities can be listed. Federal agencies and departments, working in conjunction with EPA, should make every effort to propose and list facilities in installments as soon as possible during the 30-month period, as the facilities are evaluated under the Hazard Ranking System.

The conference substitute includes House language requiring the Administrator to conduct an evaluation of any facility included in the docket upon petition from the Governor of any State. The evaluation criteria for Federal facilities are to be applied in the same manner as for private facilities.

The conference substitute adopts the House provision, which mandates the commencement of a remedial investigation and feasibility study not later than six months after listing on the National Priorities List, modified to require consultation with appropriate State authorities. The conference substitute also adopts the House provision relating to commencement of remedial action requiring an interagency agreement within 180 days and mandates commencement of substantial continuous physical on-site remedial action at each facility not later than 15 months after completion of the remedial investigation and feasibility study. The Senate provision requiring completion of remedial action with conforming modifications is adopted.

The House and Senate provisions both contain language requiring that the contents of the interagency agreement include a review of alternative remedial actions and selection of a remedial action plan by the Administrator. This provision is modified by the conference substitute to provide for the joint selection of the remedial action by the head of a Federal agency and the Administrator, with the Administrator having the ultimate selection authority in case of disagreement.

Responsibility for selection of a remedial action is shared by the head of the relevant department, agency, or instrumentality and the Administrator. However, the Administrator has the additional responsibility to make an independent determination that the selected remedial action is consistent with the National Contingency Plan and is the most appropriate remedial action for the affected facility. The Administrator is required to select the remedial action where there is disagreement.

A site-specific Record of Decision (ROD) signed by the Administrator and the relevant Federal department or agency can be used to meet the requirements of this section regarding a site-specific interagency agreement (IAG) where such ROD incorporates a review of alternative remedial actions and selection of the remedial action, a schedule for completion of the remedial action, and provides for a long-term operation and maintenance of the facility. These elements of the ROD are identical to those required by subsection (e)(4), and such a ROD would serve as the interagency agreement.

The conference substitute adopts the Senate provision relating to State and local participation modified to clarify that Federal agencies are also subject to and must comply with the State participation requirements set forth in Section 121 (relating to cleanup standards). The conference substitute includes the Senate provision requiring settlements between the EPA Administrator and a private potentially responsible party for a Federal facility cleanup to be entered as a consent decree in the appropriate United States District Court. The inter-agency agreements between the Administrator of the Environmental Protection Agency and the heads of other Federal agencies are enforceable documents just as administrative orders under the Solid Waste Disposal Act and as such are subject to the citizen suit and penalties provisions of the Superfund Amendments and Reauthorization Act of 1986. Thus penalties can be assessed against Federal agencies for violating terms of agreements with the EPA Administrator.

This clarifies that CERCLA, together with RCRA, requires Federal facilities to comply with all Federal, State and local requirements, procedural and substantive, including fees and penalties, except as provided in section 121.

The House provision relating to property transferred by Federal agencies and obligations of Federal facilities under the Solid Waste Disposal Act is adopted by the conference substitute. In affirming the applicability of the corrective action requirements of the Solid Waste Disposal Act to Federal facilities, the conferees explicitly refer to the requirements of Section 3004(u) as set forth in the Environmental Protection Agency's recodification rule published on July 15, 1985, and the interpretation signed by the Administrator on February 11, 1986, and published in the Federal Register on March 5, 1986. Federal facilities are subject to corrective requirements to the same extent as any facility owned or operated by private parties and operate under the same property-wide definition of facility.

Further, the conference substitute adopts the House provision relating to site-specific national security exemptions conditioned by

language in the Senate amendment relating to specific requests for appropriations by the President.

The national security waiver should be applied only on a site-specific and instance-specific basis, and with appropriate restraint. The waiver is intended to protect the legitimate national security interests of the United States. The waiver was included—as it has been in other major Federal environmental laws—because the Departments of Defense and Energy expressed concern that operation of their facilities, vital to national security, could be seriously interfered with, particularly in time of war and other national emergencies. The national security waiver is not intended to routinely exempt response actions at Federal facilities from the public health and environmental standards imposed under the Act. Furthermore, the duration of the national security waiver is not intended to continue beyond the time required to protect legitimate national security interests. Such response actions should be conducted in an expeditious and sound manner that provides protection of human health and the environment.

The conference substitute deletes the Senate provisions relating to Federal agency settlements and memorandums of understanding between the Administrator and the head of a Federal agency with regard to selection of remedial actions.

The conference substitute retains the limited grandfather provision in the House amendment for certain Department of Energy facilities, but the requirements of this Act, including Sections 120 and 121, apply to all Federally-owned or operated facilities, including those facilities for which a response action, remedial action plan or other type of cleanup plan, in whole or part, is currently under development.

All provisions of the Act relating to Federal facilities, including the terms of interagency agreements and records of decisions, are subject to the citizens suits provision.

The Administrator shall take into account the special ecological and environmental missions of certain Federal land managers, such as the Fish and Wildlife Service, when fulfilling the requirements of this section. The Administrator shall consider closely the plans for remedial actions recommended by these Federal officials to ensure that repsonse actions undertaken pursuant to this Act are compatible with the ecological and environmental responsibilities of these other Federal agencies.

The costs and expenses of the Administrator of the Environmental Protection Agency in overseeing the response activities at Federal facilities are reasonably necessary for and incidental to the implementation of this Act and are payable under Section 111.

Section 121—Cleanup Standards

Senate amendment—The Senate bill amends section 104(c)(4) of CERCLA to require that the President must select remedial actions that, to the extent practicable, are in accordance with the NCP and that provide for cost-effective response, taking into account the total short- and long-term costs including operation and maintenance. Remedial actions under sections 104 or 106 must attain a degree of cleanup of hazardous substances, pollutants and contami-

nants from the environment and control of further release at a minimum that assures protection of human health and the environment. Remedial actions must be relevant and appropriate under the circumstances presented. Remedial actions involving permanent treatment are preferred over those not involving treatment, and off-site transport and disposal without treatment is the least favored alternative. No RCRA or Clean Water Act permit is required for the portion of any response action conducted entirely on-site, if done in compliance with this paragraph. The Fund-balancing provision of section 104(c)(4) is continued in new subparagraph (E). Under sections 114(a) and 302(d) of CERCLA, more stringent State standards and permit requirements apply to facilities that are the subject of remedial actions selected under these provisions.

House amendment—The House amendment adds a new section 121 to CERCLA governing the selection of remedial actions under sections 104 and 106. Under this new section, remedial actions must be cost-effective, in accordance with the NCP, and require that level or standard of control of each hazardous substance or pollutant or contaminant at the facility that is necessary to protect human health and the environment. The Administrator must, to the maximum extent practicable, select permanent solutions, and if such a permanent solution is not feasible, the facility must be placed in a separate category of the NPL and reviewed no less frequently than every 5 years to determine if a permanent solution has become available and whether the existing remedy continues to protect human health and the environment. If permanent solutions are not feasible for particular sites, the Administrator is to consider containment in above-ground engineered structures. The Administrator is required to assess the long-term effectiveness of various alternatives, including permanent solutions, taking into account specified factors, and remedial actions involving treatment are preferred.

For hazardous substances, pollutants and contaminants which remain on-site, the House amendment requires that remedial actions must require a level or standard of control which is at least equivalent to a legally applicable or relevant and appropriate standard under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, or the Solid Waste Disposal Act or water quality criteria under the Clean Water Act. The Administrator is also required to consider any tolerance level established under the Federal Food, Drug, and Cosmetic Act. More stringent State standards also must be met, in accordance with a specified procedure. Remedial action involving containment must comply with the standards applicable to facilities required to obtain permits under subtitle C of the Solid Waste Disposal Act.

Material transferred off-site must be transferred to a facility operating in physical compliance with a RCRA or TSCA permit, to be placed in a unit that is not releasing any hazardous waste or constituent thereof into groundwater or surface water, and where any releases at other units at the facility are being controlled by a corrective action program approved by the Administrator.

The House amendment authorizes the Administrator to waive requirements under other Federal and State laws applicable to reme-

dial actions under section 121(g), in specified cases: an alternative remedial action will provide protection of human health and the environment substantially equivalent to the remedial action necessary to comply with such requirements; compliance with such requirements will result in greater risk to human health and the environment than alternative options; compliance with such requirements is technically impracticable from an engineering perspective; compliance will consume a disportionate share of the Fund (the Fund-balancing test of current law); or compliance will cost private parties substantially more than the Fund would pay if the Fund-balancing test were applied. Waivers cannot result in the violation of the Clean Water Act, the Marine Protection, Research, and Sanctuaries Act, the Clean Air Act, or the Safe Drinking Water Act.

On-site remedial actions do not require permits other than under the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and State groundwater laws. Removal actions under emergency circumstances do not require permits.

The House amendment sets out a detailed procedure through which State permit requirements and State substantive standards will apply to remedial actions selected under this Act. Separate provisions deal with State concurrence or nonconcurrence at Fund-financed sites, Federal facilities, and sites involving action under section 106.

New section 121(k), added by the House amendment, requires remedial action involving treatment of dioxins or dibenzofurans to meet specified requirements. New subsection (l) requires the Administrator to use value engineering review in evaluating the cost effectiveness of a response action projected to cost more than $4,000,000. New subsection (m) authorizes a State to waive the permit requirements of RCRA for mobile incinerator units involved in onsite remedial actions.

Conference substitute—The conference substitute adds a new section 121 governing the selection of remedial actions under sections 104 and 106. Under this new section, remedial actions must assure protection of human health and the environment, and must be in accordance with this new section, in accordance with the NCP, to the extent practicable, and cost effective taking into account the short- and long-term costs including operation and maintenance.

The provision that actions under both sections 104 and 106 must be cost-effective is a recognition of EPA's existing policy as embodied in the National Contingency Plan. The term "cost-effective" means that in determining the appropriate level of cleanup the President first determines the appropriate level of environmental and health protection to be achieved and then selects a cost-efficient means of achieving that goal. Only after the President determines, by the selection of applicable or relevant and appropriate requirements, that adequate protection of human health and the environment will be achieved, is it appropriate to consider cost effectiveness.

Remedial actions involving permanent treatment are preferred over those not involving such treatment, and off-site transport and disposal without such treatment is the least favored alternative. The President must assess the long-term effectiveness of various al-

ternatives, including permanent solutions and alternative treatment technologies, taking into account specified factors, and must select remedial actions that utilize permanent solutions and alternative treatment technologies to the maximum extent practicable. If the President does not select such a remedial action, the President must publish an explanation. The President may select a remedial action involving a permanent solution or alternative treatment technology whether or not such an action has been achieved in practice at any similar site.

Under new section 121(c), the President must review any facility at which any hazardous substance remains after a remedial action, no less often than every 5 years. If upon such review it is the judgment of the President that action is appropriate at the facility under such section 104 or 106, the President must take such action or require a responsible party to take such action. The President is required to report to the Congress on what facilities require such review and the results of such review.

New section 121(d) establishes the substantive standards that remedial actions under sections 104 and 106 must meet. The general standard is that remedial actions must attain a degree of cleanup of hazardous substances, pollutants and contaminants released into the environment and of control of further release at a minimum that assures protection of human health and the environment. For any material that will remain onsite, the remedial action must require a level or standard of control that at least attains any legally applicable or relevant and appropriate—

> standard, requirement, criteria, or limitation under any Federal environmental law, including (but not limited to) the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, the Marine Protection, Research, and Sanctuaries Act, or the Solid Waste Disposal Act;
>
> more stringent promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that has been identified to the President by the State in a timely manner.

A remedial action must require a level or standard of control that at least attains Maximum Contaminant Level Goals established under the Safe Drinking Water Act and water quality criteria established under section 303 or 304 of the Clean Water Act, where such goals or criteria are relevant and appropriate. In determining whether water quality criteria are relevant and appropriate, the President shall consider the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which the criteria were developed, and the latest information available.

The conference substitute restricts the use of any alternate concentration level process in the selection of remedial action. Under new section 121(d)(2)(B)(ii), an alternate concentration level process cannot be used to modify or establish legally applicable standards under this section (for example, a groundwater protection standard) if the process assumes a point of human exposure beyond the facility boundary. The only exception is in cases of a known or projected point of entry of groundwater to which such a standard

would apply, into surface water which is a reasonable distance from the facility boundary. If at such points of entry, or at any point downstream where accumulations of constituents may occur, there will be no statistically significant increase of such constituents in the surface water from such groundwater, and there are enforceable measures that preclude human exposure at any point between the facility boundary and points of entry into surface water, an alternate concentration level process may assume such points of entry into surface water as the point of human exposure.

In developing projections that there will not be a statistically significant increase of constituents from such groundwater and surface water either at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream, there must be sufficient background data developed, in conjunction with the conduct of the remedial investigation/feasibility study, for both the point of entry and at any point where there is reason to believe accumlation of constituents may occur downstream, to allow a determination of whether the projected increase is greater than the 95 percent confidence limit for concentrations in surface water. In making such determinations for potential accumulations downstream, the President shall take into account the ability of the constituents to degrade, and areas along shorelines, areas of standing water, and biota where such constituents may be expected to settle out or accumulate. Measurements and projections shall not be based solely on annual averages, but the following shall also be considered as appropriate: seasonal surface water conditions; natural cycles and ambient conditions; flow, stream width, and stream depth; and the surface to groundwater relationship.

This section, sanctioning the use of an alternate concentration limit process that assumes points of exposure beyond the facility boundary, is limited to cleanup under CERCLA in which surface water is a reasonable distance from the facility boundary. This section does not address the use of alternate concentration limit processes under other environmental laws.

Under the new section 121(d)(2)(C), a State standard, requirement, criteria, or limitation that could effectively result in the statewide prohibition of land disposal of hazardous substances will not apply, if certain conditions exist. First, the President must comply with subsection (b). Second, even after compliance with subsection (b), the President must have proposed a remedial action that does not involve permanent treatment and for which the proposed disposition of waste from the remedial action is land disposal within such State. In that case, the State standard will apply if it is of general applicability and formally adopted, based on hydrologic, geologic, or other relevant considerations (and not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment), and the State arranges for, and assures payment of the incremental costs of using, an alternative facility for disposition of such materials. Clause (iv) requires the President to conform the remedial action at the Picillo Pig Farm site, Rhode Island, to the State standard.

While the requirements of subparagraph (C) create circumstances under which State requirements may be avoided, it does not establish a system of preemption. Nor does the subparagraph restrict the right of a State to undertake a clean-up or to recover the costs of the clean-up under State law or CERCLA. If a State chooses to undertake a response action pursuant to a State standard, requirement, criteria, or limitation that would not apply to a remedial action proposed by the President as a result of subparagraph (C), such action by the State shall not be interpreted or construed to be inconsistent with the National Contingency Plan for the purpose of section 107 of this Act solely as a result of the provisions of subparagraph (C).

Under new section 121(d)(3), material transferred offsite must be transferred to a facility operating in physical compliance with RCRA (or where applicable, TSCA or other Federal law) and applicable State requirements, including permitting requirements, to be placed in a unit that the President determines is not releasing any hazardous waste or constituent thereof into groundwater or surface water or soil. In addition, the section requires that any releases at other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of RCRA. The President must notify owners or operators of facilities of any determination under this paragraph.

The response and remedial actions taken by EPA under this program must be designed and carefully monitored to ensure that the proposed solutions to today's problems do not create new, perhaps more serious problems tomorrow. This is an especially important responsibility when the waste material is removed to a land disposal facility that, if improperly operated in violation of RCRA requirements, could contaminate groundwater or surface water and thereby present threats to human health and the environment.

The Managers expect that EPA shall initiate rulemaking within 180 days to implement the notice requirements of this provision. The Managers further expect that the owner or operator of a facility will be provided with an opportunity to meet informally prior to a final determination of eligibility except with regard to emergency removal actions. The Administrator is expected to establish post-determination procedures for resolving disputes related to determinations made under subparagraphs (A) and (B). In implementing this provison, the Agency should give appropriate consideration to the significance of the violations, including Class I violations, as compared with minor paperwork violations. Until the conclusion of such rulemaking, the Administrator shall implement these provisions on the basis of the statutory terms.

The addition of "soil" to the requirements of (d)(3)(A) is intended to preclude the transfer or disposal of hazardous wastes or constituents thereof into unlined units and lined units with releases other than de minimis releases into soil.

New section 121(d)(4) authorizes the President to select remedial actions that do not attain a legally applicable or relevant and appropriate standard, requirements, criteria, or limitation, as required by section 121(d)(2), in six circumstances—

> the remedial action selected is only part of a total remedial action that will comply when completed;

compliance would result in greater risk to human health or the environment than alternative options;

compliance is technically impracticable from an engineering perspective;

the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable requirement, through use of another method or approach;

with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied it to other remedial actions; or

in the case of a remedial action that is solely Fund-financed, the proposed remedial action is inappropriate under the Fund-balancing test of previous section 104(c)(4).

The President must make and publish findings of such circumstances, before selecting a remedial action not in compliance with section 121(d)(2).

The conference substitute does not include as a circumstance in which the President may select a remedial action that does not conform to a State requirement, anything comparable to section 121(j)(4)(A) of the House amendment. Any State standard that has been waived by a responsible State official pursuant to State law is not a legally applicable or relevant and appropriate standard within the meaning of this section.

With respect to the provision regarding inconsistent application of State standards, this provision will apply both where the standard is not of general applicability or where the standard has not been applied consistently by the State.

Subsection (d)(4)(D) allows the selection of a remedial action that does not comply with a particular Federal or State standard or requirement of environmental law, where an alternative provides the same level of control as that standard or requirement through an alternative means of control. This allows flexibility in the choice of technology but does not allow any lesser standard or any other basis (such as a risk-based calculation) for determining the required level of control. However, an alternative standard may be risk-based if the original standard was risk-based.

New section 121(e) provides that no Federal, State, or local permit may be required for response action conducted entirely onsite, where such response action is selected and carried out in compliance with section 121. States are given the authority to enforce requirements of consent decrees to which the remedial action must conform, in Federal district court. Consent decrees are to contain dispute resolution and enforcement provisions, and may include administrative enforcement. Consent decrees must contain stipulated penalties for violations of the decree of $25,000 per day, enforceable by the President or the State.

New section 121(f) sets out the way in which States will be involved in the selection of remedial actions. Paragraph (1) requires regulations governing State participation, including notice to the State of negotiations with potentially responsible parties and the opportunity to participate in those negotiations and be a party to any settlement. This latter requirement applies even in advance of the promulgation of such regulations.

New paragraph (2) provides that the President must give a State at least 30 days notice if the President proposes to select a remedial action under section 106 that does not attain a legally applicable or relevant and appropriate Federal or State standard, requirement, criteria, or limitation under the authority of section 121(d)(4). The State may concur in such selection and become a signatory to the consent decree. If the State does not concur, the State shall intervene in the section 106 action before entry of the consent decree. If the State establishes, on the administrative record (to which it is entitled to contribute), that the finding of the President under section 121(d)(4) was not supported by substantial evidence, the court shall order the remedial action conformed to such standard, requirement, criteria, or limitation. If the court does not so modify the remedial action, the State may assure payment of the incremental costs of meeting such standard, requirement, criteria, or limitation, and the remedial action (and consent decree embodying it) will be so modified anyway.

The provisions of section 121(f)(3) apply to the selection of remedial action at Federal facilities. The President must give a State at least 30 days notice if the President proposes to select a remedial action for a Federal facility that does not attain a legally applicable or relevant and appropriate Federal or State standard, requirement, criteria, or limitation under the authority of section 121(d)(4). If the State concurs in such selection, or fails to act within 30 days, the remedial action may proceed. If the State does not concur, the State may bring an action in Federal district court for the purpose of determining whether the finding of the President under section 121(d)(4) is supported by substantial evidence. If the State establishes, on the administrative record, that the finding is not supported by substantial evidence, the remedial action must be conformed to such standard, requirement, criteria, or limitation. If the court determines that the State has failed to establish that the finding was not supported by substantial evidence, and the State within 60 days pays the incremental costs of meeting such standard, requirement, criteria, or limitation, the remedial action will be conformed to the State's wishes. If the State fails to pay within 60 days, the remedial action shall proceed.

Nothing in new section 121(f)(3) precludes the Federal agency from taking remedial action unrelated to or not inconsistent with the disputed standard, requirement, critera, or limitation, or gives a court authority to enjoin such remedial action.

If the President determines that a permanent solution is not to be utilized, the President may consider remedial actions in which hazardous substances and pollutants and contaminants are securely contained in above-ground structures.

In addition, with respect to any remedial action which involves treatment of chlorinated or halogenated dioxins or chlorinated or halogenated dibenzofurans, the President shall require, to the maximum extent practicable, treatment that provides each of the following:

(a) A destruction and removal efficiency meeting or exceeding 99.9999 percent.

(b) A treatment process which minimizes accidental emissions of chlorinated or halogenated dioxins, dibenzofurans, and other highly toxic materials to the environment.

(c) Protection against emissions of any hazardous substance or pollutant or contaminant into the air during normal operation and equivalent protection during nonsteady operations including start-up, shut-down, and power failures.

(d) Protection against secondary formation of halogenated dioxins and dibenzofurans.

This requirement does not apply if the President determines that (1) an alternative method of treatment or disposal attains a standard of performance that is equivalent, or (2) there will be no human exposure to the hazardous substance or pollutant or contaminant containing chlorinated or halogenated dioxins or chlorinated or halogenated dibenzofurans.

SECTION 122—SETTLEMENTS

Senate amendment—The Senate amendment authorizes the President to enter into settlement agreements with potentially responsible parties for the payment or conduct of remedial action. This provision also requires, with enumerated exceptions, the President to provide a non-binding preliminary allocation of responsiblity among all potentially responsible persons at a facility and authorizes the President to issue subpoenas for information needed to make allocations. If a responsible party or parties makes an offer to provide for payment or the undertaking of remedial action exceeding 50 percent of the total allocation and the offer was equal to or greater than the cumulative shares of the parties making the offer, a decision to reject such offer would be subject to judicial review. The provision authorizes the two mandatory covenants not to sue: for off-site transport in certain circumstances and for permanent treatment or destruction of hazardous substances. Finally, the provision authorizes settlements with *de minimis* contributors and provides for mixed funding.

House amendment—The House amendment confirms the authority of the Administrator of EPA to enter into settlement agreements with responsible parties regarding the clean-up of sites where hazardous substances have been or are threatened to be released. This provision also establishes a moratorium on action to clean up a site while negotiations are ongoing.

Additionally, the provision requires that settlements be incorporated in consent decrees which allow for public comment and judicial review, with a further authorization that settlements for performance of removal actions, for *de minimis* contributors, and for certain cost recovery under section 107 may be incorporated in administrative orders subject to a public comment period. The provision also authorizes the Administrator to grant covenants not to sue if such covenants are in the public interest. Finally, the provision authorizes the Administrator to reach early settlements with *de minimis* contributors and to agree to administrative settlements of cost recovery actions and authorizes mixed funding.

Conference substitute—The conference substitute adopts the House provision with several modifications. The substitute also incorporates specific elements of the Senate amendment.

As set forth in section 122(a) of the substitute, the decision of the President to undertake the settlement procedures set forth in this section is discretionary. Thus, the Conferees modified the language of section 122(a) to clarify this intent. The language used in this subsection is now identical to the language of section 122(g) which authorizes settlements with de minimis contributors. In both contexts, the decision to undertake the procedures set forth is in the discretion of the President.

Section 122(a) is also modified to state that the decision to use these procedures is not subject to judicial review. The purposes of the settlement procedures set forth in section 122 are to expedite settlements and to assure the effective clean-up of Superfund sites. Nothing in this section diminishes the responsibility of or precludes the court from reviewing the lodged consent decree to determine whether relevant requirements of the Act have been met and whether entry of the decree is in the public interest.

Section 122(b)(1), which addresses mixed funding for site response actions, provides that the President, where appropriate and in the public interest, may reimburse parties for certain costs of actions under the agreement by using monies from the Fund on behalf of parties who are unknown, insolvent, similarly unavailable, or refuse to settle.

In cases of mixed funding, the President is to undertake actions to impose the costs of the Fund obligations on non-settlors. Such actions may be to seek reimbursement for expenditures already made or to determine liability in advance of the actual incurrence of costs. But in any case, the burdens of mixed funding should be shifted to non-settlors, whether through reliance on the authorities of this Act or other laws, unless it would be unreasonable to undertake such efforts.

Section 122(b)(4), regarding future obligations of the Fund, reflects a compromise between the House and Senate provisions. It was adopted as an additional incentive for the President to select permanent remedies and thus avoid the circumstance where the failure of a remedy would result in additional Fund expenditures. It should also serve as a settlement incentive for private parties in mixed funding cases, but the conferees strongly emphasize that every effort should be made by the President to recover the obligation from non-settlors. In actual practice, this provision is intended as a restraint and limit on the President's use of mixed-funding authority.

The obligation of the Fund for future liability is limited to the extent that subsequent remedial actions are necessary by reason of the failure of the original remedial action. The parameters of Government future liability at a facility are to be defined by the provisions of the consent decree which define the remedial action involved. The obligation of the Fund for subsequent remedial action applies only to that portion of the remedy which involved mixed funding in the first instance. For any portion of the remedy which did not involve mixed funding in the first instance there would be

no obligation of the Fund for future remedial action under this provision.

Where in the course of the remedial action it becomes clear that the remedial selection was based on incorrect information, making the selection inappropriate, then the Government's portion of future liability will be recalibrated as part of a new remedial selection.

Section 122(e) is modified by the conference substitute in several ways. First, section 122(e) now requires the President, in certain circumstances, to provide notice and an opportunity for private parties to conduct the RI/FS when entering into negotiations under this section. The notice need not be accompanied by information on volume and nature of waste and ranking if this information is not available at the start of the RI/FS. A separate notice and information release should be provided for private parties who actually conduct the remedial action. Information on volume, nature and ranking of wastes should be made available routinely at this time. This section further provides that this disclosure provision is subject to the other privileges and protections of law, including attorney work product. However, such other privileges and protections of law do not apply to disclosure of information generated by the President to duly authorized Committees of Congress. At the same time, this provision does not extinguish or diminish disclosure requirements under other provisions of Federal or State Law.

Section 122(e)(2) is modified to preclude the President from conducting the remedial investigation and feasibility study (RI/FS), except as provided in section (e)(4), but not other studies or investigations under section 104(b), for 90 days. Nothing in this section precludes the President from initiating a remedial design during a moratorium for negotiaitons for private party action where an RI/FS has been completed.

Section 122(e)(3) is added by the conference substitute to require the President to develop guidelines for the preparation of non-binding preliminary allocations of responsibility. The President's decision to prepare or not prepare a non-binding preliminary allocation of responsibility (NBAR) at a facility is discretionary and therefore not subject to citizens suits or judicial review. The President has the discretion to allocate the total response costs among potentially responsible parties as the President deems appropriate, including parties for which the President is considering settlement agreements under subsections (b) and (g) of section 122.

Section 122(e)(3)(B), incorporated in the conference substitute from the Senate provision, authorizes the President to subpoena such information as the President deems necessary for performing an NBAR or to otherwise implement this section.

Section 122(e)(3)(C) prohibits the admission of NBARs in any proceedings, and section 122(e)(3)(D) requires that the costs of producing an NBAR be reimbursed by a potentially responsible party whose settlement offer is accepted by the President. If the offer is not accepted, such costs are considered costs of response for purposes of sections 111 and 107.

Section 122(e)(3)(E) provides that when the President has issued a non-binding preliminary allocation of responsibility, and a potentially responsible party has made a substantial offer for a response

action which the president rejects, the President shall provide a written explanation of such rejection.

In implementing this provision, the President will establish threshold percentage criteria governing situations when the explanation needs to be provided. A substantial offer is one which represents a commitment by the potentially responsible parties to undertake or finance a predominant portion of the total remedial action. Any substantial offer must provide for response or costs of response for an amount equal to or greater than the cumulative total, under the NBAR, of the potentially responsible parties making the offer. For a substantial offer to exist, all other terms must be agreed to.

The President need provide not more than one explanation per facility. The explanation shall be provided by the Administrator of the Environmental Protection Agency, in consultation with the Assistant Attorney General for Land and Natural Resources, following headquarters review in Washington. Due to the enforcement-sensitive nature of NBARs, all such allocations must be prepared solely by Federal employees.

Section 122(e)(6) is included in the conference substitute to clarify that no potentially responsible party may undertake any remedial action at a facility unless such remedial action has been authorized by the President.

Section 122(f)(2)(A) incorporates from the Senate provision the requirement for a mandatory covenant not to sue in a settlement agreement where the President, in his sole discretion, has rejected an on-site remedy that meets the requirements of section 121 and the President has required that the hazardous substances be taken off-site. The Conferees adopted the provision concerning a covenant not to sue for off-site transport under certain circumstances, in the context of new section 121 of CERCLA, relating to cleanup standards. Section 121(b)(1) provides that off-site transport and disposal of hazardous substances or contaminated materials without treatment should be the least favored remedial action where practicable treatment technologies are available. Section 121(b)(1) also requires that the President select a remedial action that is protective of human health and the environment, that is cost-effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. The requirements of this section reflect the findings and objectives of the Solid Waste Disposal Act, which find that certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes. The special covenant not to sue described in section 121(f)(2)(A) applies to the hazardous substances which are transported to and disposed of under the terms of the consent decree at a Solid Waste Disposal Act facility that satisfies the specific requirements of the Solid Waste Disposal Act and has received a final permit pursuant to Section 3005 of the Solid Waste Disposal Act.

Section 122(f)(2)(B), adopted from the Senate provision, provides for mandatory covenants not to sue when the hazardous substance is permanently destroyed. For purposes of the section 122(f)(2)(B) special covenant not to sue, the term "such facility" means that portion of the facility where the remedial action involving the

treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of such substances has occurred. When a covenant not to sue is issued under this subparagraph (B) on the basis of application of treatment technologies involving "permanent immobilization" of hazardous substances or constituents of such substances, such technologies must change the fundamental nature and character of such substances. Placing the substance in a permanent storage container or other containment method would not constitute a permanent immobilization technology covered by this subparagraph.

The conference substitute deletes the House provision regarding a potentially responsible party's ability to obtain a covenant not to sue without a "reopener" for unknown conditions if that responsible party contributes to a "Groundwater and Surface Water Protection Fund" for any future problems at the facility. Instead, new section 122(f)(6)(B) is added to require, except in extraordinary circumstances, reopeners for unknown conditions. The provision now states that settlements shall not be granted without reopeners for unknown conditions, except in extraordinary circumstances where all other terms and conditions of the settlement agreement are sufficient to protect health and the environment from any future releases at or from the facility. This provision should be implemented in a manner consistent with the current application of the Administration settlement policy as to unknown conditions. In addition, section 122(f)(6)(C) was added, also consistent with current settlement policy, to state that "The President is authorized to include any provisions allowing future enforcement action under sections 106 or 107 that in the discretion of the President are necessary and appropriate to assure protection of the public health, welfare and the environment."

As set forth in the discussion relating to section 122(a), the decision of the President to use the de minimis settlement procedures under section 122(g) is discretionary.

Section 122(g) is further modified to clarify that the Attorney General must give prior approval for administrative orders for settlements where the total response costs at a facility are in excess of $500,000. A comparable clarification, limiting the applicability of the subsection to facilities where the total response action does not exceed $500,000, was made to section 122(h)(1) and (2), regarding cost recovery under section 107.

Section 122(m) is added to the conference substitute because there are inconsistent provisions in the House and Senate versions regarding the circumstances under which settlement agreements, including covenants not to sue, could be set aside for reasons such as fraud, misrepresentation, and mutual mistake of fact. All of these provisions are combined in a single provision to avoid confusion arising from the use of inconsistent language and to reflect the Conferees' understanding that the general principles of law regarding the setting aside or modification of consent decrees or other settlements will be applicable to all agreements and covenants not to sue under the Act.

Finally, new section 122(n), as set forth in the conference substitute, provides for the inclusion in section 308 of CERCLA of a separability provision. This provision states that if the provision regard-

ing contribution protection for those whose settlements are incorporated in administrative orders rather than consent decrees is held unconstitutional, compensation for the amount of such contribution may not be obtained from the United States.

SECTION 123—REIMBURSEMENT TO LOCAL GOVERNMENTS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment requires the Administrator to promulgate rules setting out procedures under which the Administrator will reimburse units of local government for expenses incurred in carrying out temporary emergency measures necessary to prevent or mitigate injury to public health or the environment associated with the release or threatened release of hazardous substances or pollutants or contaminants. The amount of any reimbursement may not exceed $25,000 for a single response. A cap for expenditures from the Superfund over a five-year period is included.

Conference substitute—The conference substitute includes a modified version of the House amendment. Reimbursement under this provision shall not include reimbursement for normal expenditures that are incurred in the course of providing what are traditionally local services and responsibilities, such as routine emergency firefighting.

SECTION 124—METHANE RECOVERY

Senate amendment—The Senate amendment amends the definition of "owner or operator" contained in CERCLA to exclude a person who owns or operates landfill gas recovery equipment from the definition of "owner or operator" under certain circumstances. In addition, the Senate amendment provides that, unless the Administrator promulgates regulations under subtitle C of the Solid Waste Disposal Act, the owner or operator of such equipment shall not be deemed to be managing, generating, transporting, storing or disposing of hazardous or liquid wastes under that subtitle. However, if the condensate or other waste material removed from the landfill meets the criteria of section 3001 of the Act, then it is deemed to be a hazardous waste and regulated accordingly.

House amendment—The House amendment exempts landfill gas operators from liability in actions under sections 106 or 107 and State law for specified items. The exemption does not apply where a release is caused by the negligence, gross negligence or intentional misconduct of the landfill gas operator. The House amendment contains provisions similar to the Senate amendment addressing the condensate that is produced with the recovery of gas.

Conference substitute—The conference substitute adopts the Senate amendment with modifications. It provides a conditional exemption from liability under the Act for persons who own or operate methane-recovery equipment. This exemption does not apply to any release or threatened release if either the release or threatened release was primarily caused by the activities of such owner or operator, or the owner or operator otherwise would be liable under Section 107 if such owner or operator were not the owner or

operator of such equipment. The conference substitute adopts the Senate provision addressing the condensate that is produced with the recovery of gas.

Section 125—Certain Special Study Wastes

Senate amendment—The Senate amendment to section 105 provides that, until the Hazard Ranking System is revised, special study waste sites described in section 3001(b)(2)(B) or (3)(A) of the Solid Waste Disposal Act may be listed on the National Priorities List only if the Administrator makes findings based on facility-specific data. Liability for costs, damages, or penalties may only be imposed if specific findings have been made and the Administrator supports those findings in court.

House amendment—The House amendment requires the Administrator to revise the Hazard Ranking System (HRS) as it applies to facilities that contain substantial volumes of fly-ash and other wastes discussed in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act that relate to the combustion of coal or other fossil fuels in a manner which assures appropriate consideration for site-specific characteristics of such facilities.

Prior to the completion of the required revision of the Hazard Ranking System, the Administrator may not add to the NPL any facility that contains waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation relying principally on the volume of such waste and not on the actual concentrations of the hazardous constituents of such waste. Nothing in this section affects EPA's authority to list or take other actions under the Act at facilities based upon the presence of substances other than waste described in section 3001(b)(3)(A)(i).

Conference substitute—The conference substitute adopts the House amendment. Provisions dealing with other special study wastes are discussed under section 105, supra.

Section 126—Worker Protection Standards

Senate amendment—The Senate amendment makes two changes to section 111(c)(6) of CERCLA, which authorizes an employee training and protection program. First, the amendment directs the Secretary of Labor to promulgate standards for health and safety protection of employees engaged in emergency response and hazardous waste operations. Second, the amendment provides that the cost of training such employees, in an amount up to $10,000,000 per year, is to be considered a permissible cost of the Section 111(c)(6) program.

House amendment—The House amendment adds a new section to CERCLA relating to worker protection standards. The Secretary of Labor is directed to issue standards for the health and safety protection of employees, including State and local government employees, engaged in hazardous waste operations. Such standards must include various general provisions to ensure worker protection. Specifically, the standards must require that general site workers receive at least 40 hours of initial instruction off the site and 3 days of actual field experience. In addition, the standards must require that supervisors directly responsible for the hazardous waste

operations receive the same training as general site workers plus 8 additional hours of special training. The standards must also prohibit untrained and uncertified persons from engaging in hazardous waste operations. The House amendment further directs the Secretary of Labor to issue interim final rules. In addition, it authorizes the National Institute of Occupational Safety and Health to award grants to nonprofit organizations for training and educating workers who are or will be engaged in hazardous waste removal, containment, or emergency resonse operations; $10,000,000 million per year from FY 86 through FY 90 are authorized to be appropriated from the general fund of the Treasury for such grants.

Conference substitute—The conference substitute adopts the House amendment, redrafted as a free-standing provision of law rather than as an amendment to CERCLA, with changes.

The conference substitute deletes "including employees of State and local governments" from subsection (a), but adds a new subsection (f), requiring EPA to promulgate a standard identical to the OSHA standard, to be applied to State and local government employees in States without State OSHA programs. This substitute assures that States which have OSHA approved plans retain the authority to promulgate appropriate standards, while States without OSHA approved plans follow EPA's promulgated standards. EPA must promulgate the standard within 90 days of final promulgation of the OSHA standard. The OSHA standard, not the EPA standard, would apply to any State that adopts a State OSHA program subsequent to enactment of the bill.

The conference substitute also makes changes to address the phasing-in of new regulatory requirements. The House amendment is modified to specify that interim regulations will remain in effect until one year after the promulgation of final regulations, at which time the final regulations will take effect. Interim final regulations will take effect within 60 days after this section's date of enactment. The conference substitute also uses the term "promulgation" for "issuance" in subsection (a) of the bill, "proposed standards" for "minimum general requirements" in subsection (b), and "regulations" for "rules" in subsection (d).

The conference substitute includes the addition of a new subsection addressing the extent to which final regulations must include minimum general requirements. In proposing regulations, the Secretary of Labor must include all of the requirements listed under Section 126(b) of the House bill. After notice and comment on the proposal, the Secretary must include all of these requirements in the final plan unless the Secretary determines that the evidence in the public record considered as a whole, does not substantiate inclusion of one or more of the requirements in the final rule. This approach is intended to give the Secretary needed flexibility in promulgating new standards. The Secretary's determination could be challenged under Section 6 of the OSHA Act, based on the "substantial evidence rule".

The conference substitute also modifies the training requirements contained in the House amendment. The House amendment is clarified to make training standards applicable to employees whose jobs cause them to work directly with hazardous substances. In addition, the conference substitute modifies the training require-

ments for general site workers, onsite managers and supervisors to specify that such persons must have either 40 hours of instruction or its equivalent. Equivalent training includes the training that existing employees might have already received from actual, onsite experience.

Funding for the grants program is also changed to reflect the Senate's approach under Section 111(c) of CERCLA. Thus, Section 126(b)(4) of the House amendment, which authorizes appropriations from the general fund of the Treasury, is deleted. Finally, the conference substitute requires the National Institute of Environmental Health Sciences, rather than the National Institute of Occupational Safety and Health, to administer the program.

SECTION 127—LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS

Senate amendment—The term "incineration vessel" is defined under section 101 of CERCLA. Incineration vessel liability under section 107 of CERCLA is equated to liability of facilities under section 107 of CERCLA. Financial responsibility requirements under section 108 of CERCLA are revised to direct the President to require additional evidence of financial responsibility for incineration vessels to reflect different risks posed by incineration vessels. The Marine Protection, Research and Sanctuaries Act of 1972 is amended to revise provisions which had been interpreted as preempting other legal remedies for damages by the decision in *Middlesex County Sewerage Authority* v. *National Sea Clammers Association.* Section 107 of CERCLA is amended to clarify that a vessel owner would be liable in accordance with section 107 under maritime tort law and that physical damage to the proprietary interest of the claimant is not required as a condition of liability.

House amendment—The term "incineration vessel" is defined under section 101 of CERCLA. Incineration vessel liability under section 107 of CERCLA is equated to liability of facilities under section 107 of CERCLA. Financial responsibility requirements under section 108 of CERCLA are revised to allow the Administrator to require additional evidence of financial responsibility for incineration vessels to reflect different risks posed by incineration vessels.

Conference substitute—The conference substitute adopts the Senate amendments with regard to the definition of incineration vessel, liability under section 107 of CERCLA, and financial responsibility under section 108 of CERCLA. Regarding financial responsibility, the President shall require evidence of financial responsibility for ocean incineration under this section commensurate with the financial responsibility appropriate for activities with similar risks.

The conference substitute adopts a modification of the Senate amendment to the Marine Protection, Research, and Sanctuaries Act of 1972. This modification makes clear that the Marine Protection, Research and Sanctuaries Act of 1972 does not preempt any person's right (1) to seek damages or enforcement of any standard or limitation under State law, including State common law, or (2) to seek damages under other Federal law, including maritime tort law, resulting from noncompliance with any requirement or permit

under the Marine Protection, Research and Sanctuaries Act of 1972.

The conference substitute adopts the Senate amendment with regard to liability under maritime tort law and the absence of physical damage to a claimant's proprietary interest.

Additionally, the Environmental Protection Agency has recently announced its decision to promulgate final regulations prior to issuing permits, including research permits, for incineration of wastes at sea. The Environmental Protection Agency should proceed promptly with its final regulations for all types of ocean incineration permits. These final regulations are expected to fully address all the comments received from the States and the public on the regulations proposed on February 28, 1985. The Administrator will promptly revise these final regulations, as appropriate, if required by subsequent research.

TITLE II—MISCELLANEOUS

SECTION 201—POST-CLOSURE

Senate amendment—The Senate amendment requires the Administrator of EPA to conduct a study and report to Congress on options for a program to finance the post-closure maintenance of RCRA-regulated hazardous waste treatment, storage and disposal facilities in a manner which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment. Provisions for the transfer of liability under section 107(k) of the original CERCLA are suspended until Congress receives the report and enacts subsequent legislation.

House amendment—The House amendment repeals the Post-closure Liability Trust Fund provisions of CERCLA that are in both the tax title and in section 107(k) of the original law. The amendment requires the Comptroller General to study and report to Congress on a program for the management of liabilities after the closure of hazardous waste disposal facilities that are regulated under the Solid Waste Disposal Act (SWDA or RCRA).

Conference substitute—Instead of repealing the Post-closure Liability Trust Fund provisions, the conference substitute includes a suspension of the liability transfer provisions. The Comptroller General is required to conduct a study and report to Congress on options for a program for the management of the liabilities after the closure of RCRA-regulated hazardous waste treatment, storage and disposal facilities in a manner which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment. Specific elements from both the House and Senate amendments are included in the description of the program, the options to be considered, and the assessments that are to be conducted as part of the study.

SECTION 202—HAZARDOUS MATERIALS TRANSPORTATION

Senate amendment—The Senate amendment requires that each hazardous substance designated under subsection 101(14) be listed

and regulated under the Hazardous Materials Transportation Act by June 1, 1986, or at the time of such designation, whichever is later, and places certain liabilities on common or contract carriers for such listed and regulated substances.

House amendment—The House amendment requires that each hazardous substance designated under subsection 101(14) be listed and regulated under the Hazardous Materials Transportation Act within ninety days after the date of enactment of CERCLA or at the time of such designation, whichever is later, and places certain liabilities on common or contract carriers for such list and regulated substances.

Conference substitute—The conference substitute adopts the Senate provision but changes the date of regulation from June 1, 1986, to 30 days after the date of enactment.

SECTION 203—STATE PROCEDURAL REFORM

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment establishes new section 309 of CERCLA. This section provides for a Federal commencement date for State statutes of limitations which are applicable to harm which results from exposure to a hazardous substance. State statutes of limitations define the time in which an injured party may bring a lawsuit seeking compensation for his injuries against the party alleged to be responsible for those injuries. These statutes usually run from two to four years, depending on the State. In the case of a long-latency disease, such as cancer, a party may be barred from bringing his lawsuit if the statute of limitations begins to run at the time of the first injury—rather than from the time when the party "discovers" that his injury was caused by the hazardous substance or pollutant or contaminant concerned.

The study done pursuant to Section 301(e) of CERCLA by a distinguished panel of lawyers noted that certain State statutes deprive plaintiffs of their day in court. The study noted that the problem centers around when the statute of limitations begins to run rather than the number of years it runs.

This section addresses the problem identified in the 301(e) study. While State law is generally applicable regarding actions brought under State law for personal injury, or property damage, which are caused or contributed to by exposure to any hazardous substances, or pollutant or contaminant, released into the environment from a facility, a Federally-required commencement date for the running of State statutes of limitations is established. This date is the date the plaintiff knew, or reasonably should have known, that the personal injury referred to above was caused or contributed to by the hazardous substance or pollutant or contaminant concerned. Special rules are noted for minors and incompetents.

Conference substitute—The conference substitute adopts the provision in the House amendment.

SECTION 204—CONFORMING AMENDMENT TO FUNDING PROVISIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment changes the name of the "Hazardous Substance Response Trust Fund" to the "Hazardous Substances Superfund". The amendment further provides that money in the Hazardous Substance Response Trust Fund shall be available only for expenditure as provided in Section 111 of CERCLA as amended by the Superfund Amendments and Reauthorization Act of 1986.

Conference substitute—The conference substitute adopts the House provision.

SECTION 205—LEAKING UNDERGROUND STORAGE TANKS

Section 205 of the conference substitute amends Subtitle I of the Solid Waste Disposal Act by adding a new subsection 9003(h) to establish a response program with respect to leaks from underground tanks which contain petroleum. Other amendments to Subtitle I are also included in this section.

The response program created by the new subsection (h) relies on two mechanisms to assure that the financial resources necessary to pay for corrective actions are available. First, under amendments to section 9003(c) and (d) of Subtitle I, the owner or operator of each underground storage tank will be required to maintain evidence of financial responsibility for taking corrective action and compensating third parties for property damage and bodily injury. In most cases the evidence of financial responsibility maintained by the owner or operator of the tank to satisfy this requirement will be adequate to pay the entire cost of cleanup and response. At most sites response costs are comparatively small, because cleanup proceeds quickly. A rapid response should continue to be a high priority in the implementation of the response program created by these amendments.

Second, the amendments establish a $500 million Leaking Underground Storage Tank Trust Fund to be financed by taxes on motor fuels to pay for response costs in a limited set of circumstances. Before regulations are published under the existing Subtitle I, the Administrator or the State may use the Fund to pay for a corrective action whenever that action is necessary, in the judgment of the Administrator or the State, to protect human health and the environment. The Administrator can also issue an order requiring corrective action.

After the effective date of the regulations, subsection (h) provides for use of the Fund where the financial resources of the owner or operator (or guarantor) are not available. Specifically, the Fund could be used in the following circumstances: where there is no solvent owner or operator; where it is necessary to take immediate action to protect human health and the environment and only the Fund is available to provide the resources; where an owner or operator has refused to cooperate in a cleanup or comply with an order by the Administrator or the State; and where expenditures at locations apart from the facility are necessary to protect human health or the environment from petroleum that has migrated from the facility pursuant to the provisions of paragraph (11) of subsection (h).

In addition there will be a very limited number of cases for which there is an identifiable and solvent owner or operator who is

willing to cooperate in the cleanup, but whose financial resources (including the methods of financial responsibility required by a section 9003(c)(6)) will not be adequate to pay the entire cost of a response. In those cases, the Administrator or a State is authorized to use the Fund to pay the costs that exceed the level of financial responsibility required of the owner or operator as established by the Administrator in regulations under subsections 9003(c) and (d).

The purpose of these amendments is to assure rapid and effective responses to releases from underground storage tanks. The first step in a response is a recognition that a leak is occurring and is typically made by the owner or operator when he or she reports the presence of a release. Releases are likely to be recognized and reported sooner, if the financial uncertainties associated with a corrective action which face the owner or operator with a leaking tank are reduced or removed. The combination of an insurance requirement and a Fund to pay the costs which exceed the amount of the insurance is intended to reduce the financial uncertainty and encourage early reporting of releases.

DEFINITION OF PETROLEUM

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The response program established by this subsection is available only for tanks containing petroleum substances. The House amendment contains an explicit definition of the term petroleum. The definition is a restatement of the meaning of the term as established by current law in section 9001(2) of the Solid Waste Disposal Act. The new definition does not add or remove from regulation any substance or underground tank subject to current law.

Conference substitute—The conference substitute adopts the House provision.

FINANCIAL RESPONSIBILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment includes provisions that limit the liability of owners or operators for the costs and damages caused by releases.

Conference substitute—The conference substitute does not include any limitations on liability as provided in the House amendment, but it does require the Administrator to promulgate requirements for maintaining evidence of financial responsibility.

Section 9003(c) of Subtitle I as it exists in current law requires the Administrator of the EPA to promulgate release detection, prevention and correction regulations as may be necessary to protect human health and the environment. Regulations for petroleum tanks satisfying these provisions are by law due to be promulgated by May, 1987.

Under current law the Administrator need not require that underground tank owners and operators maintain evidence of financial responsibility.

Section 9003(c) and (d) of current law is amended by the conference substitute to define this new element of the underground storage tank regulatory program.

The amount of financial responsibility required shall be sufficient to take corrective action and to compensate third parties for bodily injury and property damage caused by either a sudden or nonsudden release at an underground storage tank. Corrective action means cleanup of a release and, as in existing law and other portions of the conference substitute, includes relocation of residents, providing alternative water supplies and conducting exposure assessments.

The Administrator in promulgating financial responsibility regulations is given the authority to establish various classes and categories of tanks. In setting the amount of financial responsiblity necessary to satisfy the new requirement, the Administrator is authorized to vary the amount depending on the class or category to which the tank belongs. The conference substitute establishes a minimum amount which shall apply to all owners or operators unless the Administrator sets a lower amount by regulation. This minimum is $1 million per occurrence. The Administrator may also include in the regulations an aggregate amount per insurance policy.

The Administrator is authorized to set a minimum amount lower than $1 million per occurrence for some classes or categories of tanks. This authority can only be implemented by regulation and is intended to allow the Administrator to address the characteristics of tanks where the capacity of the tank is small and the volume moving through the tank is not large. The Administrator cannot set a minimum financial responsibility requirement of less than $1 million for tanks which are engaged in petroleum production, refining, or marketing, nor is the Administrator authorized to set a lower amount for tanks that dispense very large volumes, for instance, tanks at airports.

The Administrator has the authority to establish financial responsibility requirements in amounts which exceed $1 million for particular classes or categories of tank owners and operators.

The conference substitute provides the Administrator with the authority to suspend the financial responsibility requirement for a particular class or category or in a particular State. This suspension does not apply to a particular owner or operator who cannot get insurance. Rather the Administrator may suspend the requirement only after making a determination that no method of demonstrating financial responsibility is generally available to owners or operators in the class or category or the State. Before granting a suspension to the owners or operators in a particular class or category or State, the Administrator must also find that those owners or operators are taking steps to form a risk retention group or that the State is taking steps to form a fund for owners and operators in that State.

A suspension of the financial responsibility requirement for a class or category or in a particular State may only last for a period of 180 days. At the end of that period, the Administrator must make a new set of determinations before the suspension can be extended for another 180-day period. The Administrator must again

find that no method of financial responsibility in the amounts required by the requlation is available to the owners or operators in the class or category or in a particular State. To extend the suspension the Administrator must also find that substantial progress has been made in establishing a risk retention group or the State fund or that it is not possible to establish such a group or the State is unwilling or unable to establish such a fund. The suspension may be extended indefinitely in 180-day cycles, but only after the dual determination.

The authority for the Administrator to suspend the financial responsibility requirement under Subtitle I does not extend to the requirements of Subtitle C. Hazardous waste land disposal facilities that have lost interim status under section 3005(e)(2) of the Solid Waste Disposal Act as a result of failure or inability to comply with the financial responsibility requirements of Subtitle C shall not be affected by this provision.

RESPONSE PROGRAM BEFORE REGULATIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Because regulations have not yet been promulgated under Subtitle I of the Solid Waste Disposal Act, the response program established by the House amendments is subdivided into two parts, one providing authority to respond before such regulations are issued and one providing authority to respond consistent with the regulatory provisions after they are promulgated. For petroleum tanks the Subtitle I regulations are due by law to be promulgated by May 1987.

Conference substitute—The conference substitute adopts the House amendment with modifications. The House amendment provides that the corrective action required with respect to particular release should take into account the factors including the business characteristics of the owner or operator. In this section the subject matter is corrective action and the only appropriate considerations are the factors necessary to adequately protect human health and the environment.

RESPONSE PROGRAM AFTER REGULATIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides authority for the Administrator (or a State) to use the resources of the Leaking Underground Storage Tank Trust Fund to undertake corrective action with respect to a release from an underground storage tank after the date on which the Subtitle I regulations are effective. Corrective actions undertaken by the Administrator pursuant to this paragraph will be required to meet the corrective action requirements established under the existing Subtitle I provisions. The requirement in that case is a corrective action as may be necessary to protect human health and the environment. The same requirements that the Administrator would apply to an owner or operator required to take corrective action would also apply to a corrective

action undertaken by the Administrator or a State using the resources of the Fund.

The authority of the Administrator or a State to respond is limited by the House amendment to the following specific circumstances: (1) where no person can be found who is subject to the regulations and has the capacity to undertake a corrective action; (2) a situation where the Administrator must promptly respond to protect human health and the environment; and (3) where the owner or operator has refused to cooperate with an order by the Administrator to take corrective action.

Conference substitute—The conference substitute adopts the House amendment with two modifications. First, the conference substitute clarifies the authority of the Administrator to authorize States to undertake response actions with the resources of the Fund. Second, the conference substitute adds a fourth circumstance in which the Administrator or a State can use the resources of the Fund to undertake a response. Where the total costs of a corrective action exceed the financial responsibility requirement for a particular owner or operator and paying the costs above the insured amount would significantly impair the ability of the owner or operator to continue in business, the Fund may be used to pay all or a portion of the costs of the corrective action which exceed the amount of financial responsibility that the owner or operator has been required to maintain.

Paragraph (2)(C) of subsection (h) authorizes the use of the Fund to assure effective corrective actions. The term "effective" means that the corrective action is fully protective of human health and the environment and is implemented in a timely way so as to minimize the risk posed by the release. To assure effective actions, the Administrator or the State may implement the corrective action using the financial resources of the Fund and seek to recover the costs of such action under paragraph (6).

The costs of corrective action and the injury to persons and damage to property caused by releases from underground storage tanks is minimized when corrective action is taken quickly. The Fund should be used to facilitate quick response where such action is necessary to protect human health and the environment.

PRIORITY CORRECTIVE ACTIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment instructs the Administrator to give highest priority in undertaking corrective actions with respect to releases from underground storage tanks to those releases which pose the greatest threat to human health and the environment.

Conference substitute—The conference substitute adopts the House amendment with a clarification that States shall be subject to the same priorities when they undertake corrective actions pursuant to this response program.

CORRECTIVE ACTION ORDERS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides the Administrator authority to issue orders to the owners or operators of underground storage tanks to take corrective action with respect to a release from a petroleum tank prior to the time that regultions implementing the order authority under existing law are promulgated. The Administrator is also provided authority to issue orders for corrective action after such date, although the Administrator has such authority under current law.

Conference substitute—The conference substitute adopts the House amendment with modifications to clarify the authority of a State operating under a cooperative agreement with the Administrator to issue orders under this paragraph until such time as the State has a regulatory program approved pursuant to section 9004. After regulations are promulgated, orders under this paragraph shall conform with the corrective action requirements of section 9003(c)(4) and meet the standard of section 9003(a).

Paragraph (2)(D) of subsection (h) authorizes the Administrator to use the Fund to respond to a petroleum release at a facility in two circumstances: 1) if the owner or operator refuses to comply with a specific order to clean up a release issued by the Administrator under authority of subsection (h), and 2) if the owner or operator refuses to comply with an order to take corrective action issued by the Administrator under section 9006 of the Solid Waste Disposal Act. In each of the two cases, the authority to use the Fund to respond only arises after the owner or operator has refused to comply with an explicit order for response to a release at a facility. Paragraph (4) of subsection (h) makes reference to this same authority of the Administrator to issue orders to take corrective action under section 9006 of the Solid Waste Disposal Act. The phrase "to carry out regulations issued under subsection (c)(4)" is not a new authority but refers to the authority contained in current law.

ALLOWABLE CORRECTIVE ACTIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a provision which includes within the definition of corrective action the temporary or permanent relocation of residents and alternative water supplies. Also included in the allowable corrective action are studies to determine the health effects of a release from a petroleum tank. However, the cost of these studies cannot be recovered from owners or operators under the House amendment.

Conference substitute—The conference substitute adopts the House provision with modifications. Reference to studies of health effects are deleted. In addition to the temporary or permanent relocation of residents and the provision of alternative water supplied, the Administrator is authorized to conduct exposure assessments at the site of a release from an underground storage tank.

Paragraph (5) of subsection (h) provides the Administrator (or the State) with authority to conduct exposure assessments at the sites of underground storage tanks which have released petroleum. The Administrator is authorized to recover the costs of such assessments from the owner or operator of the tank under paragraph (6) and the term "exposure assessment" is defined in paragraph (10) of subsection (h).

The purpose of the assessments is to determine which individuals have been exposed to the released petroleum and to aid in the design of appropriate corrective actions. Included in the assessments might be actions such as: obtaining and analyzing air, water and soil samples; determining the levels of petroleum substances in tap or well water; determining the direction and spread of the substances through various pathways of exposure; monitoring homes and buildings in the area for vapors or other signs that the substance has migrated to a particular location; and comparing the data gathered at the site on the nature of the release and the resulting exposure to other information that is available on the effects of and risks posed by exposure to the released substances.

Paragraph (5) does not authorize a house-to-house survey to determine the health problems experienced by persons living or working in the surrounding community, nor does the language give the Administrator the authority to conduct epidemiological surveys or toxicological tests of the substances released. Although the Administrator may conduct health surveys and studies at the site under other authorities, nothing in this section authorizes the Administrator to pursue cost recovery for such studies from the owner or operator of the tank.

In determining whether to conduct an exposure assessment at a particular facility where petroleum has been released, the Administrator shall take into account the presence of buildings within the vicinity of the facility in which particularly susceptible individuals might work or reside, including schools, hospitals, nursing homes and clinics.

The legislation does not affect authority under other law to conduct health studies, health assessments, or health research.

RECOVERY OF COSTS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides that the owners and operators of underground storage tanks shall be liable to the Administrator or a State for the costs of a corrective action undertaken pursuant to the authorities of this section. The standard of liability which obtains under this paragraph is the same standard of liability which would be applied pursuant to section 311 of the Federal Water Pollution Control Act.

Conference substitute—The conference substitute adopts the House amendment with modifications. The standard of liability is the same as the standard established by the House bill. The conference substitute adds a new paragraph (6)(B) relating to the equities of cost recovery which is to guide the decisions of the Administrator or a State in seeking recovery of costs. Paragraph (6)(B) is an

instruction to the Administrator and the States with respect to the administration of the program and not a defense for an owner or operator facing a cost recovery action taken by the Administrator or a State.

Paragraph (6)(B) of subsection (h) gives the Administrator or the State the discretion to forego full-cost recovery from the owner or operator at some facilities where a release has occurred and the Fund has been used to pay for response actions. A full-cost recovery is not intended where the owner or operator has maintained financial responsibility as required by subsections (c) and (d) and the financial resources of the owner or operator (including the insurance or other methods of financial responsibility which was maintained) are not adequate to pay for the costs of a response without significantly impairing the ability of the owner or operator to continue in business. The "equities" in such a case would dictate that the Fund be used to pay the costs or portion of the costs of response which exceed the amount of financial responsibility that the owner or operator was required to maintain. The factors to be considered by the Administrator or the State in determining the equities are the same factors which the Administrator is to consider according to paragraph (5)(C)(iii) of section 9003(d) in establishing a minimum financial responsibility requirement for various classes and categories of underground storage tanks pursuant to subsection (d) of section 9003.

Paragraph (6) of subsection (h) provides for the recovery of costs of corrective action by both the Administrator and the States from owners and operators of tanks. To encourage aggressive cost recovery by the States, EPA may, in its discretion, make available additional funds for corrective action to those States that demonstrate an effective cost recovery program.

LIMITATIONS ON LIABILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a series of provisions limiting the liability of owners and operators for the costs incurred by EPA or a State when implementing the authorities of the response program established by this section.

Conference substitute—The conference substitute deletes the House amendment.

EFFECT ON LIABILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides that no indemnification, hold harmless, or similar agreement or conveyance would be effective to transfer liability under subsection (h) from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release to any other person. Nothing in the paragraph, however, bars any agreement to insure, hold harmless, or indemnify a party to an agreement for any liability under section 9003 of the Solid Waste Disposal Act.

Conference substitute—The conference substitute adopts the House provision.

STATE AUTHORITIES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides that the response authorities assigned to the Administrator under the new subsection (h) could be delegated to States which are also delegated primary enforcement responsibility for the section 9003(c) provisions of Subtitle I. A State program is required to be substantially equivalent to the Federal program and the Administrator would make grants to the States from the Leaking Underground Storage Tank Trust Fund as necessary to undertake corrective actions with respect to releases of petroleum from underground storage tanks. The House amendment includes an allocation formula to distribute the revenue of the Fund among the States.

Conference substitute—The conference substitute does not follow the House amendment to establish a grant program, but rather allows a State to exercise the authorities of subsection (h)(1) and (2), if the Administrator determines that the State has the capability to run an effective program and the Administrator and the State enter into a cooperative agreement with respect to the actions to be taken by the State. These actions include issuing of orders to owners and operators to take corrective action, enforcing the orders, undertaking corrective action at sites where owners and operators will not or cannot respond, and recovering the costs of corrective actions paid for by the Fund. Pursuant to the conference substitute each State will be required to pay 10 percent of the cost of any corrective action undertaken either by the State or the Administrator using revenues from the Fund, after the effective date of the regulations promulgated under section 9003(c). Until such date, the full cost of such actions shall be paid for by the Fund. The Fund may also pay the full cost of a corrective action after the date of the regulations but only where the corrective action is necessary to respond to an imminent and substantial endangerment to human health and the State refuses to pay its share of the costs.

A State may issue orders or undertake corrective action with respect to a release of petroleum from an underground storage tank under paragraph (1) after the date on which the regulations are promulgated pursuant to section 9003(c) and until its program is approved under section 9004, but during this period all such actions or orders must be in compliance with the corrective action regulations promulgated by the Administrator pursuant to section 9003.

The Fund is not to be administered as a grant program with funds allocated to the States by some formula mechanism. Although the States are to be given maximum responsibility and flexibility to use the authorities of this section to assure early and effective responses, they will only receive disbursements from the Fund as necessary to respond to releases. Much of the detail of the program at the State level is not specified in the legislative language, but is to be developed and directed by the Administrator

through the cooperative agreements. The fundamental provisions of each State program should be spelled out in a generic agreement between the State and the Administrator in advance, rather than negotiated on a site-specific basis in response to releases at a particular facility.

Subsection (h) authorizes the Administrator to use the Leaking Underground Storage Tank Trust Fund to pay Federal costs (and under a cooperative agreement, State costs) of corrective action, enforcement action, cost recovery and the reasonable and necessary administrative expenses directly related to those activities. The Fund is to be used to pay the costs associated with correcting a release of petroleum from a facility. The Fund is not intended as a source of funding to assist States in developing and implementing general technical capabilities or programs to support State legal offices in carrying out their general responsibilities.

FACILITIES WITHOUT FINANCIAL RESPONSIBILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The Administrator or a State is precluded from using the Fund to undertake corrective action at a facility where the owner or operator has failed to maintain the evidence of financial responsibility required by regulations promulgated pursuant to section 9003 (c) and (d). The Fund is intended to stand behind the owner or operator who has obtained methods of financial responsibility to protect human health and the environment.

In all cases, corrective action with respect to a release from an underground tank containing petroleum is to be undertaken by the owner or operator pursuant to a corrective action order, if the owner and operator is identifiable, has the resources and capability to respond and will comply with the instructions of the Administrator or the State. Where these conditions are not present, the Administrator or the State is authorized to use the Fund to undertake corrective action. In seeking to recover the costs of that corrective action, the Administrator or the State shall not take into account the equities described in subsection (h)(6)(B), if the owner or operator did not maintain the requisite level of financial responsibility.

Nothing, including the failure of an owner or operator to maintain financial responsibility, shall preclude an action by the Administrator or the State using the resources of the Fund to take corrective action outside the boundaries of the facility as authorized by subsection (h)(5) or as necessary to respond to a release or threat of a release which poses an imminent and substantial endangerment to human health or the environment.

METHODS OF FINANCIAL RESPONSIBILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Current law provides that financial responsibility for taking corrective action can be demonstrated through any of a series of specified instruments, including insurance, guaran-

tees, surety bonds, letters of credit or qualification as a self-insurer. The House amendment allows the Administrator by regulation to establish other means which will be satisfactory to demonstrate financial responsibility.

Conference substitute—The conference substitute adopts the House provision with additional elements. The same modification made by the House amendment to section 9003(d) is included in the parallel provisions of section 9004 relating to financial responsibility demonstrations under authorized State programs. The Administrator can by regulation establish other methods of demonstrating financial responsibility which will be acceptable under authorized State programs.

In addition, the amendments made by the conference substitute strike a provision from current law. Current law provides that States can establish response funds that can be used by owners or operators of underground tanks to satisfy the financial responsibility requirements of Subtitle I. However, the language of section 9004(c)(1) would restrict such State-sponsored response funds to funds financed by fees on tanks. To assure that States have the maximum flexibility to create programs to be used to demonstrate financial responsibility for tank owners and operators within that State, the restriction on such funds as to revenue source is deleted from the current law by the conference substitute.

AUTHORITY TO ENTER FOR CORRECTIVE ACTIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adds a provision to existing law authorizing officers of EPA or the State to enter property for the purpose of taking corrective action.

COORDINATION WITH OTHER LAWS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment includes a savings clause providing that liability limits would have no affect on the liability of an owner or operator under any other law.

Conference substitute—The conference substitute includes an amendment to the existing "savings clause" of Subtitle I. Section 9008 of Subtitle I preserves the authority of States or their political subdivisions to impose regulations, standards or requirements on tank owners or operators which are more stringent than the regulations, standards or requirements imposed by the Federal government under Subtitle I. The conference substitute adds the phrase "or to impose any additional liability with respect to the release of regulated substances within such state or subdivision." to the Subtitle I provision. This substitute preserves the purpose of the House amendment which is to leave the liability of owners and operators for releases at underground storage tanks which is contained in other law, including State and local statutes and common law, un-

affected by the new petroleum response program. Regulated substances include both petroleum and other hazardous substances.

POLLUTION LIABILITY INSURANCE STUDY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Under the House amendment the Comptroller General of the United States is to conduct a study of pollution liability insurance, leak insurance and contamination insurance available to the owners and operators of petroleum storage and distribution facilities.

Conference substitute—The conference substitute adopts the House provision with modifications. The report is directed to the Congress as a whole. The report is due 15 months after the date of enactment.

SECTION 206—CITIZENS SUITS

Senate amendment—The Senate amendment authorizes citizens suits under CERCLA against two categories of persons: (1) those alleged to be in violation of any requirement which is made effective pursuant to the Act; and (2) those Federal government officials who are alleged to have failed to perform nondiscretionary duties under the Act. It is substantially similar to the House amendment, except that it does not authorize suits under CERCLA to abate imminent and substantial endangerment to public health and the environment.

House amendment—The House amendment adds a comparable new section 310 to CERCLA. It authorizes, in addition to the two categories of suits authorized by the Senate amendment, a third category of persons against whom such suits may be brought: those responsible for the actual or threatened release from a hazardous waste disposal site of a hazardous substance which presents an imminent and substantial endangerment to public health or the environment.

Conference substitute—The conference substitute adopts the House provision with modifications.

First, the substitute deletes the House provision which authorizes suits for imminent and substantial endangerment. The deletion of section 310(a)(1)(B) pertaining to imminent and substantial endangerment actions does not affect in any manner the rights of any person to commence a civil action pursuant to section 7002 of the Solid Waste Disposal Act. Under the citizens suit provision of the Solid Waste Disposal Act, any person is authorized to seek relief, including abatement, where the past or present handling, storage, treatment, transportation or disposal of any solid or hazardous waste may present an imminent and substantial endangerment to health or the environment. The section being deleted from this citizens suits provision covered "a hazardous waste disposal site," and thus, its operative effect would have been to cover only locations already covered under the comparable citizens suits provision of the Solid Waste Disposal Act. In fact, the Solid Waste Disposal Act provision applies to a broader range of locations since it applies not only to hazardous waste disposal sites, but also to sites

where solid waste disposal may present an imminent and substantial endangerment. Thus, because the Solid Waste Disposal Act provision applies to localities where disposal of solid or hazardous waste as well as hazardous substances has occurred, this overlapping provision was unnecessary. Further, the Conferee's action does not affect or otherwise impair the rights of any person under Federal, State or common law.

Further, the conference substitute provides that the President and any other officers of the United States, including the Administrator of EPA and the Administrator of ATSDR, are subject to civil actions for failure to perform a non-discretionary act or duty. In addition, a civil action may be brought against any person who is alleged to be in violation of any standard, condition, requirement, order or agreement which has become effective pursuant to this Act. These provisions specifically cover the terms of interagency agreements relating to Federal facilities.

Venue for actions under this section against persons allegedly in violation of standards, or other requirements of CERCLA, is solely in the district court where the violation occurs; similarly, actions for alleged failures to perform a non-discretionary duty may be brought where the violation occurs, or in the United States District Court for the District of Columbia.

The intervention provision contained in both Senate and House amendments is deleted from this section because a similar amendment contained in section 115 is applicable.

In addition, the substitute also clarifies the terms of the citizens suits provision and limits the bar to bringing citizens suits to those matters where the President has commenced and is diligently pursuing a court action under this Act or under the Solid Waste Disposal Act. The House amendment, which had applied this bar when the President had commenced and was diligently pursuing an administrative order, has been deleted.

Finally, the conference substitute clarifies subsection 207(h) [which replaces subsection (g) of the House amendment and subsection (f) of the Senate amendment] to state that section 206 does not affect or otherwise impair the rights of any person under Federal, State, or common law, except with respect to the timing of judicial review of the selection of a response as provided in section 113(h) of this bill or as otherwise provided in section 309 of this bill regarding State procedural reform.

Section 207—Indian Tribes

Senate amendment—The Senate amendment amends several sections of CERCLA to provide for the treatment of Indian tribes as States under the Superfund program. The amendments define "Indian Tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska native village (but not including a regional or village corporation) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. An Indian tribe is excluded from the requirements of section 104(c)(3) regarding future maintenance and cost-sharing, and the assurance regarding availability of a hazardous waste disposal facility must

be provided by the President. The President can enter into cooperative agreements with Indian tribes to carry out the Superfund program. For the purposes of sections 107(f) and 111, Indian tribes (or in certain cases, the United States acting on behalf of a tribe) are treated as trustees of natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe (if such resources are subject to a trust restriction on alienation). Indian tribes are generally afforded substantially the same treatment as a State under sections 103, 104, 105, and 107.

House amendment—The House amendment adds a new section to CERCLA to provide for the treatment of Indian tribes as States under the Superfund program. The amendment defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska native village (but not including a regional or village corporation) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. An Indian tribe is excluded from the requirements of section 104(c)(3) regarding future maintenance and cost-sharing, and the assurance regarding availability of a hazardous waste disposal facility must be provided by the Secretary of the Interior. The Administrator can enter into cooperative agreements with Indian tribes to carry out the Superfund program. For the purposes of sections 107(f) and 111, Indian tribes (or in certain cases, the Secretary of the Interior acting on behalf of a tribe) are treated as trustees of natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe (if such resources are subject to a trust restriction on alienation). Indian tribes are generally afforded substantially the same treatment as a State under section 103, 104, 105, and 107. The Administrator is authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a tribe operating under a cooperative agreement. The affected tribal government must concur in any permanent relocation of tribal members, and alternative land satisfactory to the tribe must be provided. The Administrator must conduct a survey on Indian lands and make recommendations on how tribal participation in the Superfund program can be maximized. This report must be submitted in early 1987. The statute of limitations for Indian tribes is extended until two years after the United States gives written notice to the tribe that it will not present a claim or commence an action on behalf of the tribe, or fails to do so within the time limitations specified in the Act.

Conference substitute—The conference substitute is the same as the Senate amendment, with the addition of the provisions of the House amendment regarding community relocation, the survey on Indian lands, and the extended statute of limitations.

Section 208—Studies Related to Research and Development and Insurance

Senate amendment—Research and Development: Section 153(d) of the Senate amendment requires the President to undertake a study

(and report to the Congress within four years) of the effects of the standards of liability and financial responsibility requirements imposed by CERCLA on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies.

Insurance: The Senate amendment has no comparable provision.

House amendment—Research and Development: The House amendment has no comparable provision.

Insurance: Section 209 of the House amendment adds a new subsection (g) to section 301 of CERCLA, requiring the Comptroller General to appoint a designated study group. The study group is required to undertake a study of the insurability of liability imposed under CERCLA and other laws and is to evaluate, among other matters, specified listed matters. The report is to be submitted to Congress within 18 months.

Conference substitute—The conference substitute requires the Comptroller General to undertake a study of the insurability, and effect on standard of care, of liability imposed under CERCLA and other laws in consultation with representatives of specified groups. The study is to evaluate, among other matters, the effects of liability and financial responsibility requirements imposed under CERCLA on the cost of, and incentives for, the development of alternative and innovative treatment technologies. The report is to be submitted within 12 months of enactment.

SECTION 209—RESEARCH, DEVELOPMENT AND DEMONSTRATION

Senate amendment—Section 151 of the Senate amendment establishes as program for hazardous substance research and training. The section authorizes the Secretary of HHS (acting through appropriate agencies such as NIOSH and NIEHS) and the Administrator of EPA to each support, through grants, cooperative agreements and contracts, research and training concerning the health effects of hazardous substances. Accredited institutions of higher education, research institutions, a State or local health agency, or other appropriate entity may be eligible for awards, which are subject to peer review. HHS and EPA may separately or jointly appoint an Advisory Council to assist in the implementation of this section.

Section 153 of the Senate amendment establishes a program for alternative or innovative treatment technology research. The section authorizes the President to carry out a program of research, evaluation, testing, development and demonstration of alternative or innovative treatment technologies. At least 10 sites in whole or in part should be made available for this purpose, according to listed criteria. The President is required to enter into contracts and cooperative agreements with, and make grants to, any persons including public entities, accredited institutions of higher learning, and nonprofit entitites. Federal funding may be made available to assist in demonstration project. The President is authorized to conduct a technology transfer program, and to make information available to the public.

Sections 158 and 159 of the Senate amenment establish centers for the study of biological and genetic effects of wastes and materials found in the environment and centers for the study of biological and genetic effects on humans, animals and plants of materials

found in the environment. These sections authorize the development and construction of regional centers at appropriately qualified universities, research and medical institutions for the study of the biological and genetic effects of wastes and material found in the environment.

House amendment—Subsection (a) of the House amendment establishes a program for hazardous substance research and training. The subsection authorizes the Secretary of HHS, acting through NIEHS, to fund basic research and training in the area of hazardous waste and its effects on human health and the environment. Research is funded through peer-reviewed grants, cooperative agreements or contracts made with accredited institutions of higher education. An Advisory Council is established to coordinate research and demonstration and training activities funded under this section.

Subsection (b) establishes a program for alternative or innovative treatment technology research and demonstration. This subsection authorizes and directs the Administrator of EPA to establish an Office of Technology Demonstration. Through this office the EPA may make available to approved applicants the use of sites and other assistance for the testing and evaluation of innovative technologies for treating hazardous waste. The section details the criteria and conditions under which a minimum of 10 projects will be selected annually for demonstration, and allows the use of Federal funds to assist in financing these demonstration projects. The EPA is required to maintain a central reference library, accessible by the public, of information relating to the utilization of alternative or innovative treatment technologies for remedial actions. The Office of Technology Demonstration is authorized and directed to carry out training of State and local personnel involved in the handling and removal of hazardous substances, and the management of hazardous substance facilities.

Subsection (c) establishes a program for hazardous waste research. This subsection authorizes the Administrator of EPA to conduct and support research into the effects on human health of hazardous substances and their detection in the environment.

Subsection (d) establishes university hazardous substance research centers. The subsection requires the Administrator of EPA to make at least 5 grants to institutions of higher learning to establish and operate 10 hazardous substance research centers. Recipients of grants shall be selected on the basis of criteria specifying location, available resources, and interdisciplinary needs.

Conference substitute—Subsection (a) of the conference substitute establishes the purposes of this section on Research, Development and Demonstration.

Subsection (b) establishes four new programs. One program is the hazardous substance research and training program. The provision is based on the House provision. The Conferees make some changes referring to training courses for State and local personnel, and clarifying the roles of NIEHS and NIOSH in training. The specifications of the composition of the Advisory Council were altered in line with the Senate provision. The requirements under this provision are not subject to citizen suits. Applicants receiving monies under this provision may contract with private sector companies.

Another program is the alternative or innovative treatment technology research and demonstration program. The provision is based on the House provision with a number of clarifying changes to the House language. Implementation of subsection (b)(8) is to be consistent with requirements under the Solid Waste Disposal Act.

Another program is the hazardous waste research program. The provision is based on House language but the word "waste" is changed to "substance". Language was added to ensure coordination of these activies with appropriate agencies.

Finally, a program for university hazardous substances research is established. The program is identical to the House provision. Applicants receiving monies under this provision may contract with private sector companies.

Sections 158 and 159 of the Senate amendment are deleted.

In all the programs established under this section, the Administrator is required to ensure, to the maximum extent practicable, that small businesses have an opportunity to participate in the programs.

Section 210—Pollution Liability Insurance and Risk Retention Act

Senate amendment—The Senate amendment creates a new title of CERCLA, which provides exemptions from State insurance law (except with respect to designated law or regulation) for groups that meet the qualifications of a "risk retention group." The risk retention group must be formed under the law of at least one State, and the primary activity of the group must be assuming the pollution liability of its group members. The Senate amendment also provides purchasing groups with exemption from specified State laws and regulations.

House amendment—The House amendment is the same as the Senate amendment except that the Senate language includes (1) language clarifying that risk retention groups may provide coverage only for pollution liability and (2) a more restrictive definition of State.

Conference substitute—The conference substitute adopts the House provison with the addition of the Senate language clarifying that a risk retention group may provide coverage of only pollution liability. While this section defines "pollution liability" as liability for not only hazardous substances but also pollutants or contaminants, this section does not expand liability for either.

Section 211—Department of Defense Environmental Restoration Program

Senate amendment—Section 162 of the Senate amendment is similar to the House provisions regarding the Defense Environmental Program. The primary differences are that section 162 does not provide for a DoD research, development, and demonstration program, or require DoD to provide the ATSDR with a list of hazardous substances. In addition, the transfer account provisions in the Senate amendment provide procedures for reprogramming funds into and from this account and permit funding to be used for the removal of unsafe buildings or debris at former DoD sites.

House amendment—The House amendment establishes an Environmental Restoration Program for the Department of Defense (DoD) to provide for centralized control of environmental activities in consultation with the Administrator of the Environmental Protection Agency (EPA). The Secretary has the basic responsibility for carrying out response actions subject to the requirements of, and in compliance with, CERCLA. In implementing these provisions, the Secretary must consult with and is subject to the oversight of the Administrator of the Environmental Protection Agency. The Secretary of Defense is also directed to carry out a program of research, development and demonstration to develop innovative and cost-effective cleanup technologies. In order to facilitate the funding for response actions, an Environmental Restoration Transfer account is established in this section. The transfer account aggregates all environmental restoration funding in a single budget account and provides for the allocation of funds from the transfer account to the relevant appropriation accounts (including military construction), to give the Secretary of Defense the flexibility to address environmental requirements in a timely fashion. Additionally, the section requires DoD to provide the Agency for Toxic Substances and Disease Registry (ATSDR) with a list of the 25 hazardous substances which are most widely used by DoD. The section also requires the Secretary of Defense to annually report to Congress on the status of the Environmental Restoration Program and the implementation of CERCLA statutory requirements. Finally, section 213, in conjunction with sections 117, 120 and 121 of CERCLA provides for greater public awareness and increased involvement by States, localities, and individuals in DoD environmental restoration efforts.

Conference substitute—The conference substitute accepts the Senate provisions for the establishment of the DoD Environmental Restoration Program, with certain modifications. The conference substitute requires that the "Defense Environmental Restoration Program" be carried out subject to, and in a manner consistent with CERCLA, including sections 117, 120 and 121. All response actions are to be carried out in accordance with CERCLA, including the requirement that the Administrator of the Environmental Protection Agency must jointly select the remedial action. The Conferees accept the House provisions concerning the establishment of a research, development, and demonstration program, and the requirement that DoD provide a listing of hazardous substances with the ATSDR. The conference substitute adopts the House language regarding the Environmental Transfer Account, but allows funding to be used for the removal of unsafe buildings or debris at DoD sites as provided for in the Senate amendment. The conference substitute also accepts the House provisions regarding DoD notification of environmental restoration activities; the requirement for an annual report to Congress on environmental activities; and procedures governing DoD military construction environmental response actions.

SECTION 212—REPORT AND OVERSIGHT REQUIREMENTS

Senate amendment—The Senate provision amends section 301 of CERCLA to require the EPA Administrator and the Attorney General to submit to Congress an annual report regarding certain matters related to enforcement actions and the settlement process.

House amendment—The House provision amends section 301 of CERCLA to require the EPA Administrator to submit to Congress an annual report on the progress achieved in implementing CERCLA. In addition, the House amendment requires the appropriate authorizing committees of Congress to conduct annual oversight hearings on the implementation of CERCLA.

Conference substitute—The conference substitute adopts the House provision with the following modifications: (1) the report is to be submitted on January 1 of each year and is to cover the preceding fiscal year; (2) the EPA Inspector General is to review the portion of each report that is related to EPA activities and submit the results of such review to the Congress as part of the report; (3) the report is to include information on the status of certain remedial and enforcement actions and an estimate of the resources necessary for other Federal agencies to implement the Act; and (4) certain other minor modifications are made.

SECTION 213—LOVE CANAL PROPERTY ACQUISITION

Senate amendment—The Senate amendment directs the Administrator of the Environmental Protection Agency to establish a high priority for the acquisition of all properties (including non-owner occupied residential, commercial, public, religious and vacant properties) in the area which, before May 22, 1980, the President determined an emergency to exist because of the release of hazardous substances and in which owner-occupied residences have been acquired pursuant to such determination.

House amendment—The House amendment states that the Congress finds that the area known as Love Canal in New York was the first toxic waste site to receive national attention, and that because Love Canal came to the Nation's attention prior to the Superfund program, special provisions are required to properly compensate the residents of the area. It amends Title III of CERCLA to add a new section, authorizing the Administrator of the EPA to make grants of up to $2.5 million for acquiring private property in the Love Canal Emergency Declaration Area, subject to specified conditions. The amendment requires the Administrator to conduct and publish a habitability and land-use study assessing the risks associated with inhabiting the Love Canal area. For the purposes of sections 111 and 221(c) of this Act, the expenditures authorized by this section shall be treated as a cost specified in 111(c). These provisions do not affect implementation of other response actions within the area that the Administrator has determined (before enactment of this section) to be necessary to protect the public health or welfare or the environment.

Conference substitute—The conference substitute adopts the House provision.

TITLE III—EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

The Senate amendment and House amendment both establish programs to provide the public with important information on the hazardous chemicals in their communities, and to establish emergency planning and notification requirements which would protect the public in the event of a release of hazardous chemicals. The House amendment establishes the programs as a free-standing provision of law; the Senate amendment amends CERCLA to create the new programs. The conference substitute adopts the House approach with respect to establishing the programs as a free-standing provision of law and incorporates substantive provisions from both House and Senate amendments.

SECTION 300—SHORT TITLE

Senate amendment—Provisions on Community Right-to-Know and Emergency Planning are included in the Senate bill as amendments to CERCLA, and there is no short title.

House amendment—Provisions on Community Right-to-Know and Emergency Planning are included within the "Superfund Amendments of 1985" as a free-standing title, not amending CERCLA.

Conference substitute—The conference substitute adopts the House provision; establishes that the title be cited as the "Emergency Planning and Community Right-to-Know Act of 1986."

SUBTITLE A: EMERGENCY PLANNING AND NOTIFICATION

SECTION 301—ESTABLISHMENT OF STATE COMMISSIONS, PLANNING DISTRICTS, AND LOCAL COMMITTEES

Senate amendment—The Senate amendment provides that the Governor of each State designate emergency planning districts within 180 days of enactment and appoint members of an emergency planning committee for each such district within 210 days of enactment.

House amendment—The House amendment provides that the Governor of each State establish and appoint membership to a State emergency response commission within 6 months of enactment. If the Governor does not establish such a commission, the EPA Administrator is to operate as the State commission for that State. Not later than 6 months after a State commission is established, the State commission is required to designate local emergency response committees and appoint membership to those committees consistent with the requirements of the amendment.

Conference substitute—The conference substitute provides that the Governor of each State, within 6 months of enactment, designate and appoint a State emergency response commission, which may be one or more existing emergency response organizations that are State-sponsored or appointed. If no State commission is appointed, the Governor of the State is to serve as the commission and is responsible, therefore, for performing all of the duties assigned to the commission. This would include the public availability and information functions included in Section 324.

The section also provides that, within 9 months after the date of enactment, the State commission shall designate emergency planning districts. If affected States agree, these districts may be established across State lines. Within 30 days of establishing these districts, but no later than 10 months after enactment, the State commission should appoint members to the local emergency planning committee. At a minimum, membership must include those parties specified in the House amendment. However, existing local organizations or entities may be used as the local emergency planning committee provided that they include, or are augmented to include, those parties specified for membership on such committees.

Membership on these committees, and the designation of districts, may be revised as appropriate, and interested persons may petition a State emergency response commission to modify membership of a local committee.

Section 301 also requires that the local emergency response committee and State emergency response commission designate an official to serve as coordinator of information. Recognizing the importance of having an assured, available source of information for the reports required under this title, the officials designated to serve as the coordinator for information shall be government officials who will respond to requests for information from other State agencies, local officials, the public and other interested parties.

Section 302—Substances and Facilities Covered and Notification

Senate amendment—The Senate amendment provides that any facility which has a substance listed on the list published by the Council of European Communities in its Council Directive of June 27, 1982, on the Major Accident Hazards of Certain Industrial Activities, Annex II, in excess of the quantities published with that list, is subject to the requirements of this subtitle. Such facilities are required to notify State commissions that they are covered within 90 days of the publication by EPA of the Council of European Communities list. In addition, the Governor of each State may designate additional facilities for emergency planning purposes.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute provides that the facilities covered by the bill's emergency planning requirements are those which have a substance on the list of substances published by EPA in November, 1985, in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidelines," in excess of a threshold planning quantity published by EPA within 30 days of enactment, at which time EPA will republish that list. Such substances are designated "extremely hazardous substances." Facilities which have such substances in excess of the established thresholds must notify the Emergency Response Commission that they are subject to this subtitle. The conference substitute also requires a facility to notify the State emergency response commission that it is subject to the requirements of this subtitle if the list of substances is revised or the facility acquires a new chemical and, thereby, is subject to these requirements. However, since this is

only a notification that a facility is covered and is not chemical-specific, if a facility has already given notice of its coverage with regard to another chemical, no such subsequent notice would be required.

Given the need to get this program under way in a timely fashion, EPA is directed to publish these thresholds as interim final regulations which will be binding until such time as they may be revised by a final rulemaking which will be initiated when the initial thresholds are published. If the EPA fails to publish the interim final rule as required, the threshold will be set at 2 pounds for each substance until such time as EPA publishes such thresholds as an interim final rule or as a final rule. The substitute also provides criteria to be considered by EPA in revising the list and thresholds.

The substitute provides that a Governor or State emergency response commission may designate additional facilities to be subject to emergency planning requirements. Such designation shall be made following public notice and an opportunity for comment. Any faciity designated in this fashion is, according to section 325(a), not subject to the civil penalties which otherwise apply to facilities subject to the emergency planning requirements.

This section also requires that the State emergency response commission notify EPA of facilities subject to the requirements of this section. The Administrator may specify the frequency and form of notification by States of facilities subject to the subtitle.

SECTION 303—COMPREHENSIVE EMERGENCY RESPONSE PLANS

Senate amendment—The Senate amendment establishes requirements for local emergency planning committees, within 2 years of enactment, to develop comprehensive emergency plans which include specified provisions. Facilities subject to emergency planning requirements are required to provide information to the local committees for the purpose of developing and implementing such plans. EPA is required to publish guidance documents to assist in this planning, and to review such plans upon the request of a local committee.

House amendment—The House amendment establishes similar requirements with regard to the development and content of local emergency plans and the requirement for facilities to provide information to local committees. Emergency plans are required to be submitted to the Governor for review, and EPA is required to provide technical assistance to localities in the development and implementation of emergency plans.

Conference substitute—The conference substitute adopts the Senate amendment, with modifications to conform to the House amendment. Planning is to be conducted through a public process, and the identity of those facilities subject to the emergency planning requirements is to be public. The conference substitute provides that the National Response Team issue guidance documents and that the regional response teams may assist localities in developing and implementing emergency plans. The regional response teams have discretion regarding how and whether to review and comment upon specific plans and assist each locality.

SECTION 304—EMERGENCY NOTIFICATION

Senate amendment—The Senate amendment requires that, in addition to any notice required to be provided to EPA, local emergency committees and the Governor of any affected State be notified in the event of a release which requires reporting under section 103 of CERCLA. The amendment specifies the nature of the notice and establishes a requirement for follow-up notification as appropriate.

House amendment—The House amendment applies the notice requirement to releases from a covered facility which constitute a "hazardous substance emergency." This includes accidental or abnormal releases of a hazardous substance, as defined in CERCLA, that constitute an imminent and substantial endangerment to the public health or the environment, or a release that is subject to reporting to EPA under section 103 of CERCLA which, according to EPA regulations to be promulgated, constitutes a substantial threat to public health and the environment. The House amendment includes provisions similar to the Senate bill regarding the content of the notice and the requirement to provide follow-up notice as appropriate.

Conference substitute—The conference substitute establishes the requirement that emergency notice in the event of a release be provided to local emergency committees and the State in three specific instances. First, notice is required where the release is of an extremely hazardous substance, as referred to in section 302, and the release requires notice to EPA under section 103(a) of CERCLA. Second, notice is required where it is a release of an extremely hazardous substance that is not subject to notice under CERCLA, but the release is (a) not Federally permitted, as defined in section 101(10) of CERCLA, (b) is in excess of an amount set by EPA (or, if no amount has been set, in excess of 1 pound), and (c) the release occurs in a manner which would require notice under section 103(a) of CERCLA. This requires notification where there is a release of an extremely hazardous substance that would require notice under section 103(a) of CERCLA but for the fact that the substance is not specifically listed under CERCLA as requiring such notice. Third, the substitute requires notice in specificed instances where the substance released is not an extremely hazardous substance, as referred to in section 302, but the release must be reported to EPA under section 103(a) of CERCLA. In the case of such a release, notification under this section must be provided to local and State emergency response organizations if it exceeds a reportable quantity that has been established by EPA under section 102(a) of CERCLA or, if the release occurs after April 30, 1988, exceeds the fallback threshold under CERCLA of 1 pound. April 30, 1988, is the date by which EPA is required by amendments to CERCLA elsewhere in the conference substitute to publish reportable quantity thresholds for all substances listed under CERCLA. Prior to April 30, 1988, for a release reportable under CERCLA but for which no threshold has been set, the facility must give notice to the local emergency planning committee in the same form and at the same time as such notice is required by CERCLA to be provided to EPA.

The conference substitute provides that for a release to be reportable under this section it must extend beyond the site on which the

facility is located. On-site releases that do not extend off-site are exempt from the requirements. In addition, releases which are continuous or frequently recurring and do not require reporting under CERCLA are not required to be reported under this section. Such release, if of an appropriate substance, would be reported under section 313.

The conference substitute includes a special provision for how notice is to be provided where there is a release with respect to transportation or storage incident to transportation, which under section 327 is exempt from all other provisions of this title. For such a release, the notice requirements of the section shall be fully satisfied by dialing 911, or in the absence of a 911 emergency telephone number, calling the operator and reporting the release.

The conference substitute adopts the Senate bill provisions regarding the content of an emergency notice and follow-up requirements, modified to incorporate provisions in the House amendment. The substitute requires that the notification indicate whether the substance is on the list of substances for which emergency planning is required, as provided in section 302(a). The specific chemical identity of the substance released must be provided on the notice, and is not provided trade secret protection under section 322.

Section 305—Emergency Training and Review of Emergency Systems

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment includes provisions authorizing the Federal Emergency Management Agency (FEMA) to carry out certain programs related to hazardous substances. This includes programs for the training of local emergency repsonse and other personnel, and grants of $5 million for each of years 1987 through 1990 in support of university-sponsored programs and programs of State and local governments designed to improve emergency planning and related capabilities.

The House amendment also includes a requirement that the EPA Administrator review and report to the Congress within 18 months of enactment on various emergency systems.

Conference substitute—The conference substitute adopts the House provision.

SUBTITLE B—REPORTING REQUIREMENTS

Section 311—Material Safety Data Sheets

Senate amendment—The Senate amendment directs, within 180 days of enactment, any facility at which a hazardous chemical is produced, used or stored to, to provide to the local emergency planning committee, the Governor of the State and to EPA a copy of a Material Safety Data Sheet (MSDS) for each hazardous chemical at that facility. In addition, a copy of such MSDS is to be provided within 90 days of any revision made to that form. EPA may set threshold amounts, with facilities which have less than that

amount not covered by the requirements of the section for such chemicals.

House amendment—The House amendment requires an MSDS to be filed, for each hazardous chemical, with the local emergency response committee and such local and State officials designated to receive such form. Such forms are initially required within 12 months of enactment, with revised or new initial MSDS forms to be provided within 3 months of the time an MSDS form is revised or a new hazardous chemical is first brought onto a facility. The House amendment includes provisions requiring that an MSDS be provided to another facility when a hazardous chemical is first shipped to that facility. A facility owned who had not received an MSDS in this manner and who had made reasonable efforts to obtain such an MSDS would be exempt from the requirement to provide the MSDS to the specified local emergency committee and other persons.

Conference substitute—The conference substitute incorporates the basic requirement included in both the Senate and House amendments, but clarifies in the statute that the requirement to file an MSDS applies only to those facilities required to prepare or have available an MSDS under the Occupational Safety and Health Act of 1970 or regulation under that Act. MSDS forms must be provided to the appropriate local emergency planning committee, the State emergency response commission, and the fire department with jurisdiction over the facility. The forms must be provided at those times specified in the House amendment.

The conference substitute incorporates the definition of hazardous chemical used in both the Senate and House amendments, along with the exceptions included in that definition, modified in a manner so as to clarify the intent of both bodies. The term "hazardous chemical" has the meaning in 29 CFR 1910.1200(c) of the OSHA Hazard Communication Standard. The definition of the term "hazardous chemical" in section 311(e) defines the chemicals subject to the requirements of sections 311 and 312 of Title III.

Section 311(a)(3) of the conference substitute clarifies the treatment of mixtures. The OSHA Hazard Communication Standard defines a "hazardous chemical" as a "chemical which is a physical hazard or a health hazard." A "chemical" is defined as "any element, chemical compound or mixture of elements and/or compounds." According to OSHA, inclusion of mixtures in this definition has resulted in the creation of MSDSs for over 50,000 products.

To address this, section 311(a)(3) makes it clear that an owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture, by submitting an MSDS for each of the hazardous elements or compounds in the mixture. If the mixture if determined to be a "hazardous chemical" but contains no element or compounds which are hazardous chemicals, then an MSDS must be submitted for such mixture. Once an MSDS for a hazardous element or compound is submitted for one mixture, an MSDS for the same element or compound contained in another mixture would not have to be submitted. For purposes of the list, only the elements or compounds need be listed, mixtures need not. Of course, owners or operators are free to submit an MSDS on the mixture itself, or list the mixture, totally at their discretion.

An example of how this may work can be taken from the fragrance industry. Fragrances are produced by combining large numbers of chemical raw materials. A fragrance manufacturer may use 20 chemical elements, some of which may be hazardous, to produce hundreds of mixtures. Under this provision, they need to list only the elements or compounds, or provide the MSDS for each of the elements and compounds. An MSDS on each mixture is not required. This is especially important in the fragrance area because, by their very nature, the specific composition of these chemical mixtures may constitute highly sensitive and valuable trade-secret information, the disclosure of which could result in serious business injury.

This approach may not, however, either be practical or possible for customers who may obtain from the seller an MSDS for a mixture they purchase which indicates that the mixture is a "hazardous chemical." In such instances, the customer may lack the data or it may not be practical to provide a separate MSDS for each hazardous chemical in that mixture. In that situtation the customer would list the mixture or provide an MSDS for the mixture to State and local authorities under section 311. Moreover, in such instances, the customer may not be told by the seller the identities of some or all of the ingredients in the mixture because they are claimed as trade secrets under the OSHA Standard. In that case, the customer is only required to provide to State and local authorities under section 311 the information known to it. Typically, this would be limited to a copy of the MSDS received from the seller.

In order to reduce the potential burden on local emergency response committees, the conference substitute provides that, at the option of the facility, the requirements of this section can be met by filing with those specified to receive the MSDS a list of hazardous chemicals present at the facility, grouped according to categories of health and physical hazards set forth in the OSHA Act and its regulations. Where a list is supplied in lieu of individual MSDSs, it must include, for each chemical, the chemical name or common name and any hazardous component of each chemical, as these were provided on the MSDS. Upon request of a local emergency response committee, the actual MSDS would be provided by the facility. A public request for the MSDS would be made through that local emergency planning committee, which would be required to obtain the MSDS from the facility and make it available.

Section 311(b) gives the Administrator authority to establish threshold quantities for hazardous chemicals below which no facility would be required to report under section 311. In establishing such quantities, the Administrator must take into account the total quantity of a hazardous chemical present at a site. For example, in the case of a manufacturer which produces or obtains benzene and formulates 200 mixtures with the benzene, the threshold would apply to the total benzene at the facility, regardless of whether it is still in bulk storage or has been formulated into mixtures. However, for persons who purchase mixtures which contain hazardous chemicals in concentrations which may not be known to the purchaser, the Administrator may establish thresholds based on the total quantity of the mixture, including nonhazardous chemicals.

Some companies voluntarily may prepare MSDSs for chemicals that are not a physical hazard or health hazard within the meaning of the OSHA standard. Because such a chemical is not a "hazardous chemical" within the meaning of 29 CFR section 1910.1200(c) (and since an MSDS is not required for such a chemical under the OSHA standard), such a chemical would not be subject to the requirements of section 311 and section 312 of this Act.

SECTION 312—EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORMS

Senate amendment—The Senate amendment establishes an Emergency Inventory Form upon which, for all substances on which an MSDS is required, information is reported regarding the maximum amount of the hazardous chemical present at a facility during the preceding calendar year (in ranges), a description of the storage or use of the chemical, and its location. These reports would be filed with local emergency committees, the Governor of the relevant State and the EPA each year, or whenever a significant change occurs in the amount or presence of such a chemical. The first report would be filed within 6 months of enactment. EPA could set threshold amounts of the substances, below which a facility would not be required to report.

House amendment—The House amendment provides for an annual report containing similar information, as well as other information related to the substance and how it should be dealt with in an emergency situation. The reports are to be provided only to the local emergency response committee, with the first report due 18 months after enactment. EPA also has the authority to set reporting thresholds.

Under the House amendment this report has only to be filed for substances which EPA determines, due to specific factors, are likely to cause an imminent and substantial endangerment to public health or the environment. The House amendment also contains a provision for Superfund sites to provide these reports, and a study by the Office of Technology Assessment of the advisability of extending these reports to cover disposal sites regulated under RCRA.

Conference substitute—The conference substitute establishes a procedure to provide reporting of information on those chemicals subject to reporting under the Senate amendment. To minimize the burden of this reporting and to provide the information in a manner which is of maximum usefulness to government emergency response offices and personnel, other government officials with a need for the information, and to the public, a "2-tier" process for reporting is established. Under this approach, a summary of the information on the covered chemicals is provided in the form of an annual report, with information on specific chemicals available upon subsequent request made on a facility-by-facility basis. Further, to provide for the development of a manageable program, EPA is provided with the authority to establish reporting thresholds, including thresholds set by classes of chemicals or categories of facilities. In establishing quantity thresholds under section 312(b), the Administrator shall consider the degree to which the

hazardous chemical, if released at the facility, would endanger the health of individuals in the community, including emergency response personnel.

Chemicals subject to reporting under subsection 312 are the same as those subject to subsection 311. As in section 311, the conference substitute clarifies the intent of the Congrees in the area of mixtures. The OSHA Hazard Communication Standard defines a "hazardous chemical" as a "chemical which is a physical hazard or a health hazard." A "chemical" is defined as "any element, chemical compound or mixture of elements and/or compounds." Section 312 makes clear that an owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture, by submitting an inventory form for each of the hazardous elements or compounds in the mixture. If the mixture is determined to be a "hazardous chemical" but contains no elements or compounds which are hazardous chemicals, then an inventory form must be submitted for such mixture. Of course, owners or operators are free to submit an inventory form on the mixture itself, totally at their discretion. If the facility owner or operator elects to submit an inventory form for each hazardous element or compound in the mixture (rather than for the mixture itself), the amounts of the element or compound present in the pure state and in all mixtures at the facility may be aggregated and reported on a single inventory form as the aggregate amount of the element or compound present at the facility as a whole.

The inventory form required under this section and the MSDS information required under section 311 are intended to provide both quantitative and qualitative information about the hazards of covered chemicals. It is therefore important for MSDS information submitted under section 311 to correspond with inventory information submitted under this section. It is expected that a facility owner or operator who elects under section 311(a)(3) to report on mixtures by reporting on the elements or compounds of each mixture will also report on the elements or compounds of such mixtures under this section. Similarly, if a facility owner or operator elects under section 311(a)(3) to report on each mixture, it is expected that inventory forms will be provided for each such mixture.

The initial step in the 2-tier reporting provision is an annual report provided to the local and State emergency response organizations, and to the fire department with jurisdiction over the facility. The first report is to be provided on or before March 1, 1988, with annual reports thereafter, each reflecting the preceding calendar year.

The information contained in the "Tier I" report is an estimate (in ranges) of the aggregate maximum and aggregate average daily amounts (in ranges) and the general location, of each category of hazardous chemicals at the facility. In establishing the breadth of the ranges, the Administrator may consider the degree of precision with which these broad categories of hazardous chemical can be reported. The categories for these reports are to be the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and its regulations (*i.e.,* carcinogens, corrosives, irritants). EPA is provided with the authority to modify the categories to group substances which present "similar hazards

in an emergency" or to list "individual hazardous substances of special concern to emergency response personnel" for reporting purposes. Any modifications of categories for health or physical hazards shall correspond to any similar modifications made under the authority of section 311(a)(2)(A)(i).

The second stage of this information process involves reporting on specific chemicals. Such reports would be provided upon specific request for information from a particular facility. Therefore, under the authority of this statute, no person, including a government official, could establish as an annual reporting requirement the provision of these Tier II forms on specific chemicals.

The Tier II report on a specific chemical provided pursuant to a request would include the same information on the specific chemical that is provided for the aggregate chemicals on the Tier I report (although EPA could establish different ranges for each report), as well as a description of the manner of storage of the chemical and the location at the facility. In addition, the form would indicate whether the location information is to be kept confidential, consistent with section 324. The facility owner may always elect to keep Tier II location information from public disclosure.

Unlike the Tier I information, which relates to categories of hazardous chemicals, the Tier II information relates to individual chemicals. The quantity of a particular chemical that is used in a chemical manufacturing or processing operation may constitute valuable trade-secret information. For that reason, if precise quantities of the maximum and average daily amounts of the hazardous chemicals had to be provided, compliance with section 312(d)(2) might result in the compromise of valuable trade-secret information.

Sections 312(d)(2) (B) and (C) have been drafted to avoid unnecessary disclosure of trade-secret information, while at the same time, providing emergency response personnel, State and local officials, and members of the public the information needed to evaluate the nature and magnitude of potential public health hazards that might arise in the event of a hazardous substance emergency and to engage in effective emergency response planning. To that end, sections 312(d)(2)(B) and (C) contemplate that maximum and average daily inventory information will be provided in ranges.

In order to protect chemical process trade-secret information, the reporting ranges may need to be broad. At the same time, this is a community right-to-know provision, and the purpose of this report is to provide the public with information about chemicals at facilities. The reporting ranges should provide a reasonable accommodation between the disclosure necessary for community right-to-know and effective hazard evaluation and emergency response planning on the one hand, and protection of legitimate trade-secret information on the other, and not be broader than necessary to assure such trade-secret protection. EPA may want to look at the ranges used to develop the 1977 inventory reporting under section 8(b) of the Toxic Substance Control Act for guidance.

As regards the process for obtaining Tier II information, the conference substitute establishes separate procedures for (1) the State emergency response commission and local emergency planning committees and fire departments; (2) other State and local officials;

and (3) the public. Those in the first category can obtain Tier II information upon their own request. Those other State and local officials in the second category may have access to the information through the State commission or local committee, presumably through the information coordinators appointed under subsection 301 of this Act. The request, if made by such an official acting in his official capacity, may not be denied.

A process is established for public access to this information which also operates through the State commission and local committee. A person seeking information on a specific chemical must file a written request and indicate the specific facility for which information is requested. If the information has already been provided to a government official under the above procedure, the person will be given access to that information. This provision is designed to ensure that the public will have access to any Tier II information which has been provided to State and local officials acting in their official capacity, fire departments with jurisdiction over facilities, State emergency planning commissions or local emergency planning committees. It is intended that when forms are provided to government officials in accordance with this section, copies of such forms be retained in order to make them available to the public. The information procedures to be developed under section 301 should provide that this occur so that a facility need only provide Tier II information once each year for each chemical.

If the local Emergency Planning Committee or State Emergency Response Commission does not have the information in its possession, it is required to request information from the facility owner or operator regarding hazardous chemicals for which more than 10,000 lbs. were present at the facility at any time during the preceding calendar year. However, if less than 10,000 lbs. of the chemical were stored at the facility, the Committee or Commission would request the information if, in its discretion, it deemed such a request to be appropriate.

In order to assist the Committee or Commission in exercising this discretion, the member of the public seeking the information must include a statement explaining why the information is needed. Based on this statement, the Committee or Commission may or may not choose to make a request of the facility to provide the information. Although the conference substitute establishes a procedure for the public to have access to this information, and business establishments are certainly a part of "the public," this provision is not intended to provide a means for competitors to find out confidential business information about each other. State emergency response commissions and local emergency planning committees should exercise their discretion in light of this consideration. A State commission or local committee must respond to a request for Tier II information within 45 days of receiving that request.

The conference substitute also provides for access to the facilities by the fire department of relevant jurisdiction to conduct an on-site inspection of the facility. At such an inspection, the specific location information and volume information on hazardous chemicals would be provided.

Provisions contained in the House amendment related to the applicability of these requirements to Superfund sites and an OTA

study regarding possible applicability to RCRA-regulated disposal sites are not included in the conference substitute.

SECTION 313—TOXIC CHEMICAL RELEASE FORMS

GENERAL

This section establishes requirements for annual reporting on releases of certain toxic chemicals to the environment. This reporting covers releases that occur as a result of normal business operations, as distinct from abnormal, emergency releases which must be reported under section 304.

FACILITIES COVERED

Senate amendment—The Senate amendment applies to facilities with ten or more employees that are in Standard Industrial Classification (SIC) Codes 20–39 (the manufacturing sector) and which manufacture or process more than 200,000 pounds per year of listed substances or which use more than 2,000 pounds per year of such substance for purposes other than manufacturing or processing. The President may apply the requirements of the bill to other particular facilities if the President determines that such action is warranted on the basis of proximity to other facilities that release the substance, history of releases at such facility, and other factors. This action may be taken by the President on his own motion or at the request of a Governor of a State, with respect to facilities within that State.

House amendment—The House amendment applies to any facility at which a listed extremely toxic substance is present during any applicable 12-month period in excess of a cumulative threshold amount established by the Administrator, and from which such substance is released to the environment.

Conference substitute—The conference substitute combines elements of the Senate and House amendments. Coverage of facilities is based on SIC Codes 20–39, except that the Administrator may add or delete SIC Codes to the extent necessary to achieve the purposes of this section. Additionally, the Administrator may apply these requirements to other particular facilities as provided in the Senate amendments.

Subparagraph 313 (b)(1)(B) of the conference substitute provides that the Administrator of EPA may add or delete SIC codes specified for coverage in the legislation. This authority is limited, however, to adding SIC codes for facilities which, like facilities within the manufacturing sector SIC codes 20 through 39, manufacture, process or use toxic chemicals in a manner such that reporting by these facilities is relevant to the purposes of this section. Similarly, the authority to delete SIC codes from within SIC codes 20 through 39 is limited to deleting SIC codes for facilities which, while within the manufacturing sector SIC codes, manufacture, process or use toxic chemicals in a manner more similar to facilities outside the manufacturing sector. For example, facilities within SIC code 2875 mix or blend for sale at the retail level various fertilizer products in response to specific customer needs. They may fall within SIC codes 20 through 39 because this activity may be classified as a

"mixing or blending," which generally is a manufacturing activity. Yet, given the retail context and the nature of the blending and mixing done by these specific facilities, reporting by such facilities may not be appropriate. Subparagraph 313 (b)(1)(B) is intended to provide EPA the authority to address issues regarding the coverage of such facilities. It does not provide EPA the authority to change the overall scope of the reporting program for Toxic Chemical Release Forms.

TOXIC CHEMICALS COVERED

Senate amendment—The Senate amendment applies to releases to the environment of toxic chemical substances which, on the basis of available information and in the judgment of the President, are manufactured in or imported into the United States in aggregate quantities that exceed 500,000 pounds per year and, (i) based on epidemiological or other population studies, generally accepted laboratory tests, or structural analysis are known to cause or are suspected of causing in humans adverse acute health effects, cancer, birth defects, heritable genetic mutations, or other health effects such as reproductive dysfunction, neurological disorder, or behavioral abnormalities, or (ii) because of toxicity, persistence, or tendency to bioaccumulate in the environment, may cause adverse environmental effects. The President must publish a list of substances meeting these criteria by July 1, 1986. Unless and until this list is published, the reporting requirements apply to specific chemical substances identified in section 101 (14) of CERCLA. The President is required to review and revise the list of chemicals no less often than every two years. Any person may petition the President to add or delete a substance. The President also is authorized to modify the quantitative thresholds described above related to volume of chemical manufacture, processing or use, and aggregate chemical manufacture and importation.

House amendment—The House amendment requires the Administrator, within 24 months of enactment, to publish a list of extremely toxic substances to be subject to specified reporting requirements. These are to be hazardous substances and hazardous chemicals that are so acutely toxic that their release into the environment in any amount or form may present an imminent and substantial endangerment to human health and chemicals (such as vinyl chloride, benzene, asbestos, and poly chlorinated biphenyls) which are known to cause or are suspected of causing cancer, birth defects, heritable genetic mutations, or other chronic health effects in humans. If the Administrator fails to publish such list within such 24-month period, the list shall consist of the Acute Hazards List developed by the Administrator as part of its Federal Initiative for Responding to Accidental Releases of Air Toxics (described in the July 26, 1985, notice from the Office of Solid Waste and Emergency Response of the Environmental Protection Agency) until such list is published.

Conference substitute—Subsection (d) of the conference agreement requires reporting on listed toxic chemicals that cause, or reasonably can be anticipated to cause, significant adverse acute human health effects, various chronic human health effects, and

significant adverse effects on the environment. A chemical should be listed if the Administrator determines, in the Administrator's judgment, that there is sufficient evidence to establish any one of the following:

1. Acute human health effects—The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

In making this determination, the Administrator is to consider individuals who are sensitive to a particular chemical. The determination that concentration levels capable of causing a significant acute adverse effect are reasonably likely to exist beyond facility site boundaries requires consideration of factors in addition to the chemical toxicity and other properties of a substance. For example, it is possible that a particular chemical, while it could cause a significant acute adverse effect at a high concentration level, would be very unlikely to reach that concentration level beyond the facility site boundary because of volume and pattern of use or release and other chemical-specific factors. To include a substance on the list on the basis of this criterion, the Administrator would determine that, within the United States, concentration levels that can cause the effects described above are reasonably likely to occur as a result of continuous or frequently recurring releases. The term "continuous or frequently recurring releases" is included only to distinguish routine releases that are a normal consequence of the operation of the facility from the episodic and accidental releases that are subject to section 304. There is no requirement to make any facility-specific finding, and it is not necessary actually to demonstrate these concentration levels or effects near any particular facility.

The phrase "beyond facility site boundaries" means any point outside the boundaries of the site on which the facility is located. With regard to some types of chemicals and patterns of discharge and dispersal, the highest concentration to which persons outside the site boundary may be exposed will occur adjacent to the boundary. In other cases, the highest concentration may occur some distance away, as when an air emissions plume cools and settles to the ground.

2. Chronic human health effects—The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

The phrase "in humans" in subsection (d)(2)(B) clarifies that health effects are to be considered insofar as they are or reasonably can be anticipated to be manifested in human beings as distinct from other organisms. It does not limit the Administrator to considering only substances for which there are human data.

3. Adverse environmental effects—The chemical is known to cause or can reasonably be anticipated to cause, because of—

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or—

(iii) its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

In determining what constitutes a significant adverse effect on the environment that would warrant reporting under this section, the Administrator should consider the extent to which the toxic chemical causes or reasonably can be anticipated to cause any of the following adverse reactions, even if restricted to the immediate vicinity adjacent to the site:

(1) Gradual or sudden changes in the composition of animal life or plant life, including fungal or microbial organisms in an area.

(2) Abnormal number of deaths of organisms (e.g. fish kills).

(3) Reduction of the reproductive success or the vigor of a species.

(4) Reduction in agricultural productivity, whether crops or livestock.

(5) Alterations in the behavior or distribution of a species.

(6) Long lasting or irreversible contamination of components of the physical environment, especially in the case of groundwater, and surface water and soil resources that have limited self-cleansing capability.

The use of the term "bioaccumulate" is not intended to distinguish between this term and other technical terms, such as "bioconcentrate" and "biomagnify" that sometimes are used interchangeably.

The number of toxic chemicals included on the list solely on the basis of adverse environmental effects as described above may not exceed 25 percent of the total number of listed chemicals.

In making a determination that a chemical meets any of the toxicity criteria under subsection (d)(2) the Administrator must consider generally accepted scientific principles of toxicity evaluation or, data from laboratory toxicity tests, or appropriately designed and conducted epidemiological and other studies of populations, available to the Administrator.

The Administrator, in determining to list a chemical under any of the above criteria, may, but is not required to, conduct new studies or risk assessments or perform site-specific analyses to establish actual ambient concentrations or to document adverse effects at any particular location.

Subsection (c) defines the list of toxic chemicals for which reports under this section will be required. This list will include chemicals designated in Senate Environment and Public Works Committee Print No. 99-169 including any revisions to such list made by the Administrator. The Administrator may add chemicals to the list or delete chemicals from the list at any time on the basis of the criteria set forth in section 313(d)(2). Any person may petition the Administrator to add a toxic chemical to the list on the basis of the acute or chronic human toxicity criteria. The Administrator must respond to such a petition within 180 days, either by initiating a

rulemaking to add or delete the chemical to the list or publishing an explanation why the petition is denied.

A Governor of a State may petition the Administrator to add or delete a chemical from the list. In response to a Governor's petition to add (but not delete) a chemical to the list, the chemical automatically must be added to the list within 180 days after receipt of the petition unless the Administrator, within that time period, initiates a rulemaking to add the chemical to the list or publishes an explanation why the chemical does not meet any of the criteria for listing in section 313(d)(2). A chemical thus added to the list is subject to the same reporting requirements as all other chemicals on the list. This procedure would not, of course, shift the burden of proof in court from the Governor to EPA if EPA elects not to include a chemical proposed by a Governor on the list for reporting.

Subsection (d)(3) of the conference substitute provides that a chemical may be deleted from the list if there is not sufficient evidence to meet any of the criteria described in paragraph (2). A chemical need only meet one of the three criteria listed in subparagraphs (A), (B) or (C) of paragraph (2) to be listed. Similarly, a chemical will be deleted only if it fails to meet any of these three criteria.

In cases where the list of chemicals for which reporting is required refers to compounds of a "chemical" which is a group of related chemicals rather than a specific chemical with accompanying Chemical Abstracts Service (CAS) number, the person submitting the form may include aggregate data including all releases of those individual chemicals on one reporting form rather than listing data separately for each individual chemical in the group. Thus, for example, a single form can be submitted for "polybrominated biphenyls" as listed in Senate Environment and Public Works Committee Print No. 99-169 without identifying the individual polybrominated biphenyls being released or reporting release data separately for each one. This does not preclude the Administrator from requiring reporting on individual chemicals for which aggregate reporting otherwise would be required.

REPORTING THRESHOLDS

The conference substitute establishes certain threshold amounts for purposes of reporting toxic chemicals. For the reports required by July 1, 1988 on releases during calendar year 1987, reporting is required of persons who manufacture or process more than 75,000 pounds per year. This threshold decreases over the next two years to 50,000 pounds per year for the report due July 1, 1989, to 25,000 pounds per year for the report due July 1, 1990 and in subsequent years. Reporting is required of facilities that use more than 10,000 pounds per year of listed chemicals for purposes other than manufacturing or processing of the chemical. The Administrator may modify these threshold amounts for a particular chemical, provided the revised threshold results in reporting on a substantial majority of the aggregate releases of the chemical at facilities subject to this section, but it would not necessarily require reporting from each facility.

INFORMATION REQUIRED TO BE REPORTED

Senate amendment—The Senate amendment requires the Administrator to publish a form which will provide for the following information for each facility:

Name, location, and principal business activity.

Use or uses of each listed chemical.

Annual quantity of each chemical transported to the facility, produced at the facility, and transported from the facility as waste or product.

Annual quantity of each chemical entering each environmental wastestream.

For each wastestream the waste treatment methods employed and annual quantity of the substance remaining in the wastestream after treatment.

The Senate amendment allows facility owners to utilize readily available data required to be collected by other laws, or reasonable estimates where such data are not available. This section does not establish monitoring requirements beyond those required by other laws. The President must require that data be submitted in consistent units.

Reporting by letter is required if the President has not published the required form.

Data submitted under these requirements are to be made available to the public, consistent with the trade secret provisions of these amendments and section 104(e) of CERCLA, as amended. In addition, the President is required to computerize the submitted data and make them available to any person by computer telecommunications on a cost-reimbursable user-fee basis.

The Senate amendment also provides criminal penalties for knowingly omitting material information or making false statements.

These information requirements do not preempt any state or local law.

House amendment—The House amendment requires annual submission to local emergency response committees of status sheets on extremely toxic substances listed under section 311(c). These status sheets include:

The total amount of a listed chemical released to the environment during the preceding 12 months

A summary of reportable quantity releases reported under section 102 of CERCLA during the preceding 12 months and

A summary of reports to the State or the EPA Administrator of discharges in excess of permits issued under the Clean Air Act, the Federal Water Pollution Control Act, or the Solid Waste Disposal Act.

Readily available data collected under requirements or other laws may be used for reporting requirements, and the House amendments do not require monitoring additional to that required under other laws. Data submitted are to be made available to the public, consistent with trade secret provisions in section 322 of the House amendments.

Conference substitute—The conference substitute requires the Administrator, no later than June 1, 1987, to publish a uniform toxic

chemical release form that facilities will use to report annual releases to the environment. If the required form is not published, reports containing the required information must be made by letter. The form must provide for reporting of the following information:

Name, location, and principal business activities at the facility.

An appropriate certification regarding the accuracy and completeness of the report, signed by a senior official with management responsibility for the person or persons completing the report.

For each listed toxic chemical, whether the chemical is manufactured, processed or otherwise used, with the general category or categories of use;

an estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility during the preceding calendar year;

for each wastestream, the methods of waste treatment or disposal employed, and an estimate of the treatment efficiency typically achieved by such methods for that wastestream; and,

the annual quantity of the toxic chemical entering each enviornmental medium.

The Administrator should include guidance regarding the certification required by subsection (g)(1)(B) in regulations published under this section. The purpose of the certification requirement is to assure that a senior management official reviews the report for accuracy and completeness.

The Administrator also should provide guidance regarding reporting of categories of use and ranges of amount of chemical present at the facility. The conference substitute provides for reporting categories of use and ranges of chemicals present because the exact use of an identified chemical at a facility or the exact amount present may disclose secret processes. In some circumstances, this information may need to be reported in terms of broad categories of use or amount ranges, similar to those utilized for the inventory of chemical substances in commerce required under section 8(b) of the Toxic Substances Control Act. However, consistent with the community right-to-know purposes of this program, the categories or ranges should be no broader than necessary to protect the trade secret.

The estimate of treatment efficiency required to be reported refers to the treatment efficiency typically achieved for each treated wastestream at that facility for the listed chemical as opposed to other components of the waste stream. It does not refer to the design efficiency or the optimum efficiency of the treatment system, unless such efficiency typically is achieved in practice.

Reporting on releases to each environmental medium under subsection (g)(1)(C)(iv) of the conference substitute shall include, at a minimum, releases to the air, water (surface water and groundwater), land (surface and subsurface), and waste treatment and storage facilities.

The purpose of this reporting requirement is to obtain available information about releases of listed toxic chemicals to the environment. To lessen the reporting burden, the conference substitute provides that readily available data (including monitoring data) col-

lected pursuant to other provisions of law may be used for reporting under this section. Where data are not available reasonable estimates of amounts released may be used. The conference substitute does not require monitoring or measurement of toxic chemical releases beyond that required by other provisions of law. All monitoring or measurement data in the possession on the facility owner or operator must be reported.

The annual reporting forms are required to be submitted to the Administrator and to the State. The Administrator is required to establish and maintain in a computer database a national toxic chemical inventory based on data submitted under this section. These data are required to be made accessible to any person by computer telecommunication and other means on a cost reimburseable basis. In determining the costs of this database for purposes of reimbursement by users, the Administrator is to consider the cost of that portion of depreciable equipment devoted to this database as well as the cost of inputting the data, programming, searching, etc. However, the resulting fee schedule is not to be prohibitive with regard to public access, and the Administrator may reduce or waive otherwise applicable fees when, in the Administrator's judgment, such action is in the public interest and consistent with the purposes of this section.

The Administrator also must make the data available by means other than computer telecommunications, which may include responding to reasonable requests for printouts of data or analyses. Also, the Administrator may choose to publish the inventory or summaries of the data.

Subsection (h) describes the intended uses of the toxic chemical release forms required to be submitted by this section and expresses the purposes of this section. The information collected under this section is intended to inform the general public and the communities surrounding covered facilities about release of toxic chemicals, to assist research, to aid in the development of regulations, guidelines and standards, and for other similar purposes.

MODIFICATION IN REPORTING FREQUENCY

Senate amendment—The Senate amendment provides for three reports, each covering the preceding calendar year. The reports are due on June 30, 1987; June 30, 1990; and June 30, 1993.

House amendment—The House amendment requires that facilities report annually beginning 21 months after enactment or 9 months after becoming a covered facility for emissions of the preceding 12 months.

Conference substitute—Subsection (i) requires annual reports beginning in 1988 covering releases from the preceding calendar year. Beginning with the report due in 1994, the Administrator may alter the reporting frequency. The reporting period would continue to be calendar year releases for the previous calendar year. However, the Administrator could modify the reporting frequency either nationally or in a specific geogrpahic area for (1) all toxic chemical release forms under this section, (2) a class of toxic chemicals or a category of facilities, (3) a specific toxic chemical, or (4) a specific facility. These modifications may be different at different times.

For some chemicals or facilities the reporting frequency might be lengthened to two years, or three years, or longer. For others it could remain annual. The frequency could be lengthened at one point in time and shortened at another. A decision could even be made to require no further reports.

To make any changes in reporting frequency the Administrator must determine that several conditions have been met. The Administrator must conclude that a modification is consistent with the objectives of this section as set out in subsection (h) based on experience from previously submitted forms and on a series of additional determinations. These determinations are (1) the extent to which the information has been used by the Administrator, other Federal agencies, States, local governments, health professionals, and the public; (2) the extent to which this information is readily available to potential users from other sources and provided to the Administrator under other programs; and (3) when shortening the reporting frequency, the extent to which this change imposes additional and unreasonable burdens on facilities submitting reports.

In making a determination to alter the reporting frequency of information under this section, if the Administrator determines that specific localities or states regularly use information reported under this section on an annual basis and that this information is not readily available from other sources as determined by the Administrator under section 313(i)(3), it is expected that the Administrator will modify the reporting frequency using specific geographic limitations so as to preserve the annual availability of this information to such specific localities and states.

Any determination must be made through a rulemaking procedure under the Administration Procedures Act, and must be supported by substantial evidence. The Administrator must notify Congress of an intention to initiate a rulemaking at least 12 months, but no more than 24 months, before a rulemaking.

Finally, any modification to change a reporting frequency must be reviewed at least once every 5 years to assure that the justification for the modification remains valid.

Subsection (k) requires that by June 30, 1991, the Comptroller General of the United States, in consultation with the Administrator and the States, submit to Congress a report on this information reporting program. The report will include a description of steps taken to implement the program, the extent of usage of the information collected, and options for modifying the requirements of this section.

MASS BALANCE STUDY

Senate amendment—The Toxic Chemicals Release Inventory Form submitted by each reporting facility would require the submission of information on the quantity of chemical substances transported to the facility, produced at the facility, and transported from the facility as wastes or products.

House amendment—No comparable provision.

Conference substitute—Subsection (l) requires the Administrator to arrange for a study to be conducted by the National Academy of Sciences to evaluate several concepts involving the use of mass bal-

ance information. The report on the study must be submitted to Congress within 5 years. The term "mass balance" is defined as the accumulation of annual quantities of chemicals transported to, produced at, consumed at, used at, accumulated at, released from, and transported from a facility as a waste or product. It is anticipated that these quantities will be determined by a variety of methods including direct measurements, engineering estimates, estimates derived from differences between measurements, and other methods. In carrying out its responsibilities under this section the National Academy of Sciences should include an assessment of the quality of these measurements and the effect of inaccuracies on the purposes of the study.

The Administrator is directed to acquire information from two sources. First, the Administrator must acquire available mass balance information from States currently conducting or, within the study period, initiating mass balance-oriented annual quantity toxic chemical release programs. Second, if these programs fail to provide an adequate representation of classes and categories of industry, the Administrator may acquire mass balance information from a representative number of facilities in other States.

For example, assuming existing State programs include several facilities which manufacture organic chemical products but only one facility manufactures inorganic chemicals, the Administrator could acquire the information from inorganic chemical manufacturing facilities in other States if the Administrator believed additional information was necessary for the study.

All information acquired under this section must be made available to the public except upon a showing satisfactory to the Administrator that the information is entitled to protection under confidential business information provisions of section 1905 of title 18, United States Code.

There are several purposes for conducting the study. First, it should assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases. Although other provisions of this section require reporting of emissions, questions remain regarding the accuracy of these estimates. At issue is whether mass balance analysis provides an effective method of assessing the accuracy of these estimates.

Second, the study should answer questions regarding the value of mass balance information or components of it, such as production rate, in determining the waste reduction efficiency of different facilities or categories of facilities, and the effectiveness of toxic chemical regulations. For example, can this information reasonably be used to compare different facilities in the same business to determine whether one is applying more rigorous environmental control than another, or delineate whether reduced releases of chemcials reflect improved control or limited operation?

Third, the study should assess the utility of such information for evaluating toxic chemical management practices. For example, can this information enhance assessments of whether facilities are altering their operations to reduce the presence or release of toxic chemicals?

Fourth, the study should evaluate the implications of implementing a mass balance program concept on a national scale. This as-

sessment should evaluate the value of information generated by such a program to the public and to regulators and policymakers at the local, State and national level together with the financial and other resources needed by governments and facilities to implement such a program and possible trade secret concerns that may arise.

Subparagraph (1)(3)(D) gives the Administrator enforceable authority to require submission of information necessary for this study.

SUBTITLE C—GENERAL PROVISIONS

SECTION 321—RELATIONSHIP TO OTHER LAW

Senate amendment—The Senate amendment provides that nothing be construed to limit the ability of any State or locality to require submission of information related to hazardous substances, toxic chemical substances, pollutants or contaminants or other materials, or to require the submission or distribution of information related to hazardous substances.

House amendment—The House amendment provides that nothing be construed to limit the ability of any State or locality to require submission of information related to hazardous chemicals or to limit the authority of any State to preempt any local law relating to the submission of information related to hazardous chemicals. However, the House amendment establishes certain requirements insofar as any State or local law related to the submission of MSDS forms, or information supplemental to such forms.

Conference substitute—Reflecting the policy of the Senate amendment and House amendment, the conference substitute provides that this title does not preempt any State or local law or affect or modify the obligations or liabilities of any person under other Federal law. The conference substitute incorporates the specific House amendment provisions with regard to the MSDS forms.

SECTION 322—TRADE SECRETS

Senate amendment—The Senate amendment provides that no person may claim that submitted information is a trade secret unless such person shows at the time the claim is made that the claimant has not disclosed the information to persons not entitled or required to receive it, that the person has taken reasonable measures to protect the information, that the information could not reasonably be discovered by another person in the absence of disclosure, and that the information provides a competitive advantage and disclosure is likely to lead to substantial competitive harm.

Certain information, however, may not be claimed a trade secret. With respect to hazardous chemicals as defined by section 101(14) of CERCLA, no person can claim as a trade secret the chemical name, physical properties, health and environmental hazards, potential routes of human exposure, disposal location, wastestream identity and quantity monitoring data, or hydrogeologic, geologic or groundwater monitoring data. With respect to toxic chemicals subject to reporting on annual releases, no person can claim the iden-

tity of a chemical or the quantity and nature of release to be a trade secret.

House amendment—The House amendment allows any facility owner or operator submitting information to any person to withhold the identity of the chemical from the submittal, if the claim that the chemical identity is a trade secret can be supported by showing that the identity has not been disclosed to persons not entitled to receive it, that it is not required to be disclosed by other Federal or State law, and that knowledge of the information may give the submitter an opportunity to obtain an advantage over competitors.

The Administrator is required to publish trade secret regulations which are identical, consistent with the above provision, and except for certain procedural variations, with regulations issued by the Secretary of Labor in the Occupational Safety and Health Administration Hazard Communication Rule. These regulations will be published by the Secretary in accordance with the Federal court ruling in *United Steelworkers of America, AFL-CIO-CLE* v. *Thorne G. Auchter.*

In addition, the Administrator is required to establish a procedure for any affected citizen to petition the Administrator to review a trade secret claim.

Conference substitute—The Conference substitute combines elements of the House and Senate amendments. Like the House bill, the conference agreement allows only the specific chemical identity (including the chemical name and other specific identification) to be claimed as a trade secret. The term "other specific identification" refers to information other than the name of the chemical, such as the Chemical Abstract Services (CAS) number, which uniquely identifies the chemical. When the specific chemical identity is claimed as a trade secret, the generic class or category of the hazardous chemical, extremely hazardous substance or toxic chemical must be submitted. Trade secret protection under this section does not apply to extremely hazardous substances in a notification required under section 304.

The generic class or category of chemical may be defined as broadly as is needed to protect the specific chemical identity from disclosure, but, consistent with the purpose of this title to provide information to the community and the public, it should be defined no more broadly than necessary to afford such protection. The Administrator may give guidance for choosing such classes or categories in implementing regulations, drawing upon experience under the Toxic Substances Control Act.

As explained below, any person entitled to withhold the specific chemical identity from a submission required by this title under sections 303(d)(2), 303(d)(3), 311, 312, and 313 must claim the identity is a trade secret on the basis of certain factors enumerated in the conference agreement, explain in the submittal the reasons why such information is claimed to be a trade secret, based on these factors, and submit the withheld identity to the Administrator together with a copy of the submittal.

Like the Senate bill, the conference substitute requires that a claim that the specific chemical identity is entitled to protection as a trade secret be documented at the time the claim is made. Con-

sistent with the procedures in subsection (d), the claimant must support a claim of trade secrecy with assertions of fact concerning the criteria described below sufficient to show, if such assertions are true, that the specific identity is a trade secret based on those criteria.

The decision to claim that a specific chemical identity is a trade secret can be made by each facility based on the factors enumerated in section 322(b). In some cases a facility may purchase chemicals the identity of which are not considered to be trade secrets by the seller. However, the knowledge of their presence at the purchasing facility could effectively define for its competitors the process and/or products being made there. In such instances, these facilities may choose to claim these chemical identities as a trade secret. Such determinations would be subject to the trade secret claim limitations of this section.

No person may claim specific chemical identity as a trade secret unless the person shows each of the following with regard to the information withheld:

(1) That such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) That the information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) That disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) That the chemical identity is not readily discoverable through reverse engineering.

The term "reverse engineering" is not defined by the conference substitute. It is taken from the opinion of the United States Court of Appeals for the Third Circuit in *United Steelworkers of America, AFL–CIO–CLC* v. *Thorne G. Auchter,* 763 F.2d 728. (3d Cir. 1985).

Regulations required to be published by the Administrator under this section of the conference substitute are to be equivalent, with respect to the reverse engineering factor, with comparable provisions of the OSHA Hazard Communication Standard as it is revised pursuant to the opinion described above. The requirement for equivalence applies only to the reverse engineering factor in subsection (b)(4). The regulations under this section are to be "equivalent" to comparable provisions of the OSHA regulations, rather then identical to them, because the two regulations address different types of reporting covering different forms of chemicals. The OSHA regulation applies to chemicals in the workplace and chemicals used in the manufacture of products, while this title applies also to toxic chemicals released to environmental media. Thus, the Administrator may consider the ability of persons to detect the presence of a specific chemical at a facility by reverse engineering applied to environmental media containing facility wastes as well as to chemical products.

Subsection (d) establishes procedures for review of claims that specific chemical identity is a trade secret. This review may be initiated by the Administrator or it may be in response to a petition. Any person may initiate such a petition.

If a petition for review of a trade secrecy claim is filed, the Administrator is required within 30 days to review the explanation for the claim filed by the claimant and determine whether the explanation presents assertions which, if true, are sufficient to justify the claim. The petitioner does not have the burden of demonstrating the inadequacy of an explanation submitted in support of a trade secret claim.

If the Administrator finds that these assertions are sufficient, the Administrator must notify the claimant that he has 30 days to supplement the explanation with detailed information to support the assertions. If, after review of the supplemental information, the Administrator determines that the assertions in the explanation are true and the specific chemical identity is a trade secret, the Administrator must notify the petitioner of this determination. The petitioner may seek judicial review of the determination. If the Administrator determines, after review of the supplemental information, that the assertions in the explanation are false and that the specific chemical identity is not a trade secret, then the Administrator must notify the claimant that the Administrator intends to release the specific chemical identity. The claimant then has 30 days to appeal the determination and may seek judicial review of the determination if the appeal is unsuccessful.

Subsection (d)(4) establishes procedures to follow if the Administrator, in response to a petition or at his own initiative, determines that the explanation that accompanied the claim of trade secrecy presents insufficient assertions to support a finding that the chemical identity is a trade secret. In this case the Administrator is required to notify the claimant of this determination, and the claimant has 30 days to appeal the Administrator's decision or, upon a showing of good cause, to amend the original explanation by providing supplementary assertions to support the trade secret claim.

The opportunity to supplement the record on the basis of "good cause" provides an opportunity to provide the Administrator with information that was not available at the time the initial explanation was submitted, information that was not called for under regulations and guidance in effect at the time, that information was mistakenly not provided by a claimant who otherwise has acted in good faith to comply with requirements of this section, or for other similar purposes. This opportunity should not be construed to diminish the obligation of the claimant to submit an initial explanation that complies with the requirements of this section and applicable regulations.

If the Administrator does not reverse his determination after an appeal or review of supplementary material, then the Administrator is required to notify the claimant, who may seek judicial review of the Administrator's determination. If the Administrator does reverse his determination, then the procedures described above related to review of detailed information in support of a claim shall be followed.

Nothing in this section or implementing regulations shall authorize any person to withhold information required to be submitted to health professionals under section 323.

Subsection (f) provides that the explanation that must accompany a trade secret claim and any supplemental information required to be submitted by the Administrator shall be available to the public unless any person shows, to the satisfaction of the Administrator, that such information is entitled to protection as a trade secret under section 1905 of Title 18 of the United States Code. In such cases, the information shall be considered confidential, except that it may be disclosed in whole or in part to other officers, employees, or authorized representatives of the United States concerned with carrying out this title.

Subsection (g) requires the Administrator to provide trade secret information to a State upon request of the Governor of the State. Access to information under this subsection is not limited to information pertaining to facilities within the State of the Governor making the request. The provisions of section 325(d)(2) apply to the Governor and State employees.

Subsection (h) requires that, when the specific chemical identity is withheld from the public because of a claim of trade secrecy, appropriate government officials will identify the appropriate adverse effects associated with the chemical and provide this information to any person requesting information about the chemical. In the case of hazardous chemicals and extremely hazardous substances, the local emergency response committee or the State emergency response commission must perform this function with regard to the adverse health effects associated with a hazardous chemical or extremely hazardous substance. In the case of toxic chemicals for which annual release reporting is required under section 313, the Administrator is to include health and enviromental effects information in the computer database required to be maintained by subsection 313(i). The adverse effects identified should be described in general terms so as not to provide a unique identifier of a particular trade secret chemical.

Subsection (i) provides that all information reported to or otherwise obtained by the Administrator or his representatives under this title shall be made available to a duly authorized committee of Congress upon written request of such committee.

Since the Administrator will have records of trade secret chemical identity information, such information could be subject to requests under the Freedom of Information Act (5 U.S.C. 552). That Act prescribes short time deadlines for responding to requests for records. Section 322 of the Conference substitute provides specific, more extensive procedures for making trade secret determinations for chemical identity information, including longer time limits for the Administrator to act, and provides separate authority for petitioners to seek judicial review of determinations that such information constitutes a trade secret. As described above, section 326(a)(1)(B)(vi) provides a mechanism for seeking judicial review of the Administrator's failure to respond to a petition. Accordingly, with respect to requests for public access to specific chemical identity information claimed as trade secret under section 322, the pro-

visions of the Conference substitute supersede the provisions of the Freedom of Information Act.

Section 323—Provision of Information to Health Professionals, Doctors and Nurses

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment establishes provisions which allow access to trade-secret information by various health professionals who have a need for such information. It includes separate provisions related to access by treating physicians or other health professionals faced with a medical emergency, a physician or other health professional in instances where no medical emergency is present, and to State and local government health professionals. Except for medical emergencies, a statement of need is required when the information is requested and the person requesting the information must enter into a confidentiality agreement limiting that person's use and disclosure of the information.

Conference substitute—The conference substitute adopts the House amendment, with modification of the confidentiality agreements required in certain circumstances by the House amendment. In adopting provisions requiring a statement of need in specified instances, it is not expected that this will add a significant burden to those seeking access to the information. Nor is the confidentiality agreement any broader than that needed to protect as a trade secret the specific chemical identify, as determined under section 322.

The confidentiality agreement normally should not prevent consultation among health professionals or inhibit the normal dissemination of medical information, provided that the trade secret itself is not compromised. In most cases, it is the linkage of a specific chemical with a specific facility or company that constitutes the trade secret. In that case, the confidentiality agreement should not prevent a health professional from discussing in a public forum the relationship between a specifically identified chemical and a particular disease, for example, so long as the chemical can not be linked to the company that has claimed the specific chemical identity to be a trade secret.

Section 324—Public Availability of Plans, Data Sheets, Forms and Followup Notices

Senate amendment—The Senate amendment requires that toxic chemical release forms, MSDS and emergency and hazardous chemical inventory forms be publicly available.

House amendment—The House amendment requires that all such forms and reports be publicly available, and requires that public notice be made of the availability of such forms.

Conference substitute—The conference substitute adopts provisions for the public availability of such forms, and public notice of such availability. With respect to making the information from the toxic chemical release forms publicly available, it is understood that the Administrator may fulfill this requirement by satisfying the requirements of section 313(j).

SECTION 325—ENFORCEMENT

Senate amendment—Failure by an owner or operator of a facility to notify appropriate local emergency coordinators and governors of a hazardous substance release is subject to a civil penalty, to be assessed by the President, of not more than $10,000 for a first violation, $25,000 for a second, $50,000 for a third and $75,000 for a fourth and subsequent violations. Procedures for assessing and challenging the penalties are prescribed. Criminal penalties of $25,000 or two years' imprisonment or both, for a first conviction of failing to notify, and $50,000 or five years' imprisonment or both for second or subsequent convictions are also provided. (Section 109 of the Senate bill).

The President may order a facility owner or operator to comply with a requirement (1) to submit material safety data sheets or an emergency inventory form to appropriate local, State or Federal officials (section 111 of the Senate bill); or (2) to notify the Governor that the facility is subject to emergency planning requirements or provide the local planning Committee with specified information. (Section 127 of the Senate bill). Violation of, or failure to comply with, the President's order subjects the violator to a civil penalty of not more than $25,000 for each day of violation.

Any person who knowingly omits or falsifies or misrepresents information on the Toxic Chemical Release Inventory Form, upon conviction shall be fined up to $25,000 or imprisoned for up to one year, or both. (Section 110 of the Senate bill).

House amendment—Any facility owner or operator who violates the requirements relating to hazardous substances reports, extremely toxic substances status sheets, or notification of a hazardous substance emergency will be liable for a civil penalty up to $20,000 for each violation.

Any owner or operator violating the requirements relating to material safety data sheets, to providing information to health professionals during a medical emergency, or to providing the Administrator with trade secret information when requested, will be subject to a civil penalty of up to $10,000 for each violation.

Doctors or nurses who request and are refused trade secrets information during a medical emergency may bring an action in Federal district court to require disclosure of the information.

The Attorney General is directed to conduct a study of the need for, and appropriateness of, criminal penalties for violations of emergency planning and community right to know provisions of law.

Conference substitute—The conference substitute is a combination of House and Senate provisions. With respect to emergency planning, section 325(a) gives the Administrator authority to order an owner or operator to provide required notification to State or local authorities under sections 302(c) and 303(d). A civil penalty of up to $25,000 for each day of violation is provided.

Section 325(b) gives the Administrator authority to assess civil penalties of $25,000 for each violation of the emergency notification requirements of section 304. Provision is also made for administrative and judicial penalties of $25,000 per day for a first violation

and $75,000 per day for a second or subsequent violation, for each day the violation continues.

Section 325(b)(1)(E)(4) establishes, in addition to civil penalties, criminal penalties for any person who knowingly fails to provide notice in accordance with section 304. Such criminal penalties, of course, would not be mandatory should EPA determine that a violation has occurred, and standard prosecutorial discretion would apply.

Section 325(c) provides for administrative and judicial civil penalties of up to $25,000 for each day a violation of the reporting requirements of sections 312 or 313 continues and up to $10,000 for each day a violation of sections 311, 322 (a) and (f), and 323(b) continues.

Section 325(d) provides for administrative and judicial civil penalties of up to $25,000 for assertion of a frivolous trade secret claim. A criminal penalty of up to $20,000 or imprisonment of not more than one year or both is provided for unlawful disclosure of trade secret information.

Section 325(e) allows a health professional to bring an action in a Federal district court to obtain information from an owner or operator that has been requested under section 323 when the request has not been complied with.

Section 325(f) establishes procedures for the review and collection of administrative civil penalties.

The Senate provision imposing criminal penalties for falsification or misrepresentation of information on a Toxic Chemical Release Inventory Form is deleted as unnecessary because of applicable criminal penalties already in law under section 1001 of title 18 of the United States Code.

Section 326—Civil Actions

Senate amendment—Citizens are provided a right to sue in Federal court to enforce standards, regulations, conditions, requirements and orders under the notification, emergency planning and hazardous substance inventory provisions of the Act and to seek the performance of nondiscretionary duties under these provisions by the President or delegees of the President. Prior to bringing such suits in Federal district court, a citizen is required to give 90 days notice to the State and the Federal government, and, where appropriate, to the alleged violator. No action may be brought under this provision if the State or Federal government is diligently prosecuting an enforcement action for the same violation. Citizens are granted a limited right to intervene in such governmental enforcement actions brought in Federal courts. Conversely, the President or a delegee may intervene as a matter of right in any citizen action brought under this section. The court may award the costs of litigation, including attorney fees, to any substantially prevailing party. The court may order appropriate remedies for violations or failures to perform nondiscretionary duties, including the payment of any civil penalties provided under the Act for the violation.

House amendment—No comparable provision.

Conference substitute—The Senate provisions allowing any person to bring enforcement actions are adopted with respect to the following actions:

1. Against an owner or operator for failure to do any of the following:

(a) Submit a followup emergency notice under section 304(c).

(b) Submit a material safety data sheet or a list under section 311(a).

(c) Complete and submit an inventory form under section 312(a) containing tier I information as described in section 312(d)(1).

(d) Complete and submit a toxic chemical release form under section 313(a).

2. Against the Administrator for failure to do any of the following:

(a) Publish inventory forms under section 312(g).

(b) Respond to a petition to add or delete a chemical under section 313(e)(1) within 180 days after receipt of the petition.

(c) Publish a toxic chemical release form under 313(g).

(d) Establish a computer database in accordance with section 313(j).

(e) Promulgate trade secret regulations under section 322(c).

(f) Render a decision in response to a petition under section 322(d) within 9 months after receipt of the petition.

3. Against the Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 324(a).

4. Against a State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 312(e)(3) within 120 days after the date of receipt of the request.

State or local governments may commence a civil action against an owner or operator who fails to do any of the following:

1. Provide notification to the emergency response commission in the State under section 302(c).

2. Submit a material safety data sheet or a list under section 311(a).

3. Make available information requested under section 311(c).

4. Prepare and submit an inventory form under section 312(a) containing tier I information.

Any State emergency response commission or local emergency planning committee and, in the case of section 312(e)(1), a fire department with jurisdiction over the facility, may commence a civil action against an owner or operator of a facility for failure to provide information under section 303(d) or section 312(e)(1).

Any State may commence a civil action against the Administrator for failure to provide information to the State under section 322(g).

Actions against an owner or operator must be brought in the district court for the district in which the alleged violation occurred, and any action against the Administrator may be brought in the Federal District Court for the District of Columbia.

Prior to bringing suits, a person must give 60 days notice to the Administrator, the appropriate State and local officials and the al-

leged violator. No action may be brought under this section if the Administrator is diligently prosecuting an enforcement action for the same violation.

The court may order appropriate remedies for violations or failures to perform nondiscretionary duties, including the payment of any civil penalties provided under the Act for the violation.

Citizens are granted a limited right to intervene in such governmental enforcement actions brought in Federal courts. Conversely, the Administrator or a delegee may intervene as a of right in any citizen action brought under this section. The court may award the costs of litigation, including attorney fees, to any substantially prevailing party.

Section 327—Exemption

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides exemption from the requirements of this Title to the transportation, including the storage incidental to transportation, of any hazardous chemical or hazardous substance.

Conference substitute—The conference substitute adopts the House amendment, clarified to assure the exemption of the transportation and distribution of natural gas. Therefore, with the exception of the provisions relating to emergency notification, the provisions of Title III do not apply to transportation or storage incidental to such transportation. The exemption relating to storage is limited to the storage of materials which are still moving under active shipping papers and which have not reached the ultimate consignee. This is consistent with the manner in which storage facilities are treated under the Hazardous Materials Transportation Act. For example, storage of materials in rail cars or in motor carrier warehouses would be exempt from the requirements of Title III (other than emergency notification) if the materials were under active shipping papers. On the other hand, storage of materials in facilities on the site of the consignor or consignee, even if such facilities are primarily transporatation-related, are subject to the provisions of Title III, since the storage would occur either before or after actual transportation of the materials.

Section 328—Regulations

Senate amendment—The Senate amendment establishes Emergency Planning and Community Right-to-Know provisions as a part of CERCLA; provides general rulemaking authority to the Administrator under section 115 of CERCLA.

House amendment—The House amendment establishes rulemaking authority for EPA on specific provisions, but includes no general rulemaking authority.

Conference substitute—The conference substitute establishes general rulemaking for EPA Administrator.

SECTION 329—DEFINITIONS

Senate amendment—The Senate amendment defines such terms as were used in the Act.

House amendment—The House amendment defines such terms as were used in the Act.

Conference substitute—The conference substitute defines the following terms, which are used in the Act: "Administrator", "environment", "extremely hazardous substance", "facility", "hazardous chemical", "hazardous substance emergency", "Material Safety Data Sheet", "person", "release", "State", and "toxic chemcial".

SECTION 330—AUTHORIZATION OF APPROPRIATIONS

Senate amendment—The Senate amendment, which enacts Emergency Planning and Community Right-to-Know provisions as part of CERCLA, provides funding for the program from the "Superfund."

House amendment—The House amendment enacts Emergency Planning and Community Right-to-Know as a free-standing title, with funds to be provided under the existing EPA authorization.

Conference substitute—The conference substitute authorizes the appropriation of such sums as may be necessary to carry out this title for fiscal years beginning after September 30, 1986.

TITLE IV—RADON GAS AND INDOOR AIR QUALITY RESEARCH

Senate amendment—The Senate amendment creates a new program for indoor air quality research, including radon.

Section 502 includes findings of the Congress relating to radon and other indoor air pollutants. These include Congressional findings that radon poses a serious health threat; that various other indoor air pollutants may pose a health threat; that existing Federal programs for research of radon and other indoor air pollutants are fragmented and underfunded; and that an adequate information base concerning radon and other indoor air pollutants should be developed.

Section 503 provides the structure for the research program within the Environmental Protection Agency. Subsection (a) provides that the EPA is to gather data on all aspects of indoor air quality, coordinate Federal government and other research and development activities, and assess appropriate Federal actions to mitigate risks posed by radon and other pollutants.

Subsection (b) specifies that the research program must include pollutants monitoring, research of health effects, research of control technologies, demonstration of control measures, and dissemination of information to the public.

Subsection (c) provides for an advisory group representing Federal agencies and an advisory group representing States and other interested parties to assist the EPA Administrator in development of the research program.

Subsection (d) provides that the EPA is to submit an implementation plan for research under this section to the Congress within ninety days of enactment.

Subsection (e) provides for an interim report to Congress within one year, identifying locations and amounts of radon within structures throughout the United States and providing guidance and public information based on research findings to date.

Subsection (f) requires the Administrator to submit a report to Congress within two years of enactment. The report is to describe the state of knowledge concerning risks to human health of indoor air pollutants; the locations and amounts of indoor air pollutants in structures throughout the country; existing standards for indoor air pollutants suggested by Federal and State governments or scientific organizations and the risk to health associated with such standards; research needs and the relative priority of these needs; and the effectiveness of possible government actions to mitigate health risks associated with indoor air quality problems.

Subsection (g) states that nothing in the provision authorizes the Administrator to carry out any new regulatory program or other activity other than research, development, information dissemination and coordination activities.

Subsection (h) provides an authorization of $3,000,000 for Fiscal Years 1986 and 1987.

House amendment—The House amendment provides for a national assessment of radon gas and a demonstration program to test methods of reducing or eliminating the threat to human health of radon gas.

A national radon gas assessment program is to identify the locations in the United States where radon is collecting in residences and other structures and assess the relative levels of radon at different locations, to determine the threat to public health of various levels of radon at each tested location, and to determine methods for reducing radon levels. The Administrator is to submit a report to Congress within one year of enactment.

The EPA Administrator is also to conduct a demonstration program to test methods of reducing or eliminating radon where it poses a threat to public health. This demonstration program is to be conducted in the Reading Prong area of Pennsylvania and New Jersey, and at such other sites the Administrator considers appropriate. The Administrator is to submit interim and final reports on the status of the demonstration program.

A total of $2,000,000 is authorized to be appropriated to carry out these provisions in Fiscal Years 1986, 1987, and 1988.

Conference substitute—The conference substitute includes the House and Senate provisions, modified.

The substitute establishes a program entitled "Radon Gas and Indoor Air Quality Research."

The substitute includes findings based on those of the Senate amendment concerning the health threat posed by radon and other indoor air pollutants and the need for better coordination of research and more complete information.

The substitute also includes provisions of the Senate amendment concerning research program design, program requirements, advisory committees, and implementation plan. The provision in the Senate amendment requiring interim reports was deleted in the conference substitute. Information that would have been provided in that report will instead be provided through reports required

under the national assessment and demonstration program provisions from the House bill, which are included in the conference substitute.

The substitute includes the national assessment of radon gas and the radon mitigation demonstration program provided in the House bill. These provisions, however, are included in section 118 of the Act, rather than Title IV.

The national assessment of radon is to be provided to Congress within one year of the date of enactment of this Act. The assessment is to address each of the points in the House provision and is also to include guidance and public information materials based on findings of research. The EPA is to address each item specified for the assessment to the extent possible.

The conference substitute also adopts the radon mitigation demonstration program to test methods and technologies of reducing or eliminating radon gas and radon daughters where they pose a threat to human health. The substitute revises the reporting provision of this subsection to provide that annual reports of the status of the mitigation demonstration program are to be submitted to Congress not later than February 1 of each year, beginning February 1, 1987. In addition, a provision is added to this subsection specifying that liability, if any, for persons undertaking activities pursuant to the program under this section shall be determined under the principles of existing laws.

The Administrator shall take into consideration any demonstration program underway in the Reading Prong area of Pennsylvania, New Jersey, and New York and at other sites prior to enactment. The demonstration program under this section shall be conducted in the Reading Prong, and at such other sites as the Administrator considers appropriate.

The substitute requires the Administrator to submit a report to Congress within two years of enactment of this Act regarding activities under this Title and making such recommendations as appropriate. While the provisions regarding the content of the report from the Senate amendment are not included in the substitute, it is intended that the report provided an overall assessment of radon and indoor air quality issues and that each of the provisions regarding report content from the Senate amendment be addressed in the report called for in the substitute.

The substitute also includes the provision of the Senate amendment which limits authority to research, development, and related reporting, information, dissemination and coordination activities specified in this section.

The substitute provides a total authorization of $5,000,000 to carry out activities under this Title and section 118 relating to the national assessment of radon and the radon mitigation demonstration program. The authorization is for Fiscal Years 1987, 1988, and 1989. In addition, the substitute provides that, of such sums appropriated in Fiscal Years 1987 and 1988, two-fifths are to be reserved for implementation of the radon mitigation demonstration program.

Other Provisions

ABATEMENT ACTIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment amends Section 106 of CERCLA, which authorizes the President, through the Attorney General and the appropriate Federal district court, to enjoin or order the abatement of actual or threatened releases of hazardous substances. Section 106 is amended to provide that these enforcement authorities do not apply with respect to any release or threatened release resulting from the normal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Conference substitute—The Conferees have agreed not to include the amendment proposed by the House which would have prohibited the use of Section 106 abatement authority for the normal application of pesticide products registered under the Federal Insecticide, Fungicide, and Rodenticide Act. By agreeing to delete the House language, the Conferees do not intend to imply that the section 106 authority may or may not be used to require those who apply registered pesticides to undertake cleanup.

PESTICIDES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment inserts "normal" prior to the phrase "application of a pesticide" in section 107(i).

Conference substitute—The conference substitute deletes the House provision.

COMMENCEMENT OF DRILLING FLUIDS, ETC., STUDY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 208 of the House amendment requires the Administrator of EPA to commence the study required under section 8002(m) of the Solid Waste Disposal Act within 6 months after the date of enactment of these amendments.

Conference substitute—The conference deletes the House provision. The study has already begun.

RELEASES ASSOCIATED WITH BRINE DISPOSAL

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 211 of the House amendment requires the Administrator of EPA to conduct a review of State programs for protection of human health and the environment in States which permit annular injection of brines associated with oil and gas production. However, the review is to be conducted only in States where there are more than 2500 active wells which use annular injection. If the Administrator finds inadequate enforcement of such State programs, the Administrator shall enforce the pro-

gram or order such corrective action as may be necessary to assure protection of human health and the environment from releases associated with annular injection or other brine disposal practices. Civil penalties are provided for violation of or failure to comply with any enforcement or corrective action taken or ordered by the Administrator.

Finally, the House amendment requires that the review be completed, and any appropriate enforcement or corrective action taken or ordered, by the Administrator within 18 months after enactment of this section.

Conference substitute—The conference substitute deletes the House amendment. A similar provision has already been enacted in the Safe Drinking Water Act Amendments of 1986, P.L. 99-339.

STATE MATCHING GRANTS

Senate amendment—Section 141 of the Senate amendment contains a provision setting up a state matching grant program. The Fund is made available to provide grants of up to $1 million per State, to be matched by the State, for cleanup of small sites—including sites where there are leaking underground storage tanks—that are now covered under the Superfund program.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute deletes the Senate provision.

ADMINISTRATIVE CONFERENCE

Senate amendment—Section 154 of the Senate amendment directs the Administrator of the Environmental Protection Agency to consider the 1984 recommendations of the Administrative Conference of the United States on alternatives to litigation in Superfund cases.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute deletes the Senate amendment.

RECOMMENDED MAXIMUM CONTAMINANT LEVELS

Senate amendment—The Senate amendment contains at section 157 a requirement that the Director of the Office of Management and Budget (OMB) complete review and release for publication a list of Recommended Maximum Containment Levels (RMCLs) proposed by the Administrator of the Environmental Protection Agency under authority of the Safe Drinking Water Act and transmitted to OMB for review pursuant to the provisions of Executive Order 12291. A directive from the Congress mandating release of the RMCLs is included in the Senate amendment because the OMB review had extended for an inordinate period of time without action or the promise of action in the near term.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute deletes the Senate provision. Subsequent to inclusion of this provision in the Senate amendment, the Office of Management and Budget did release the RMCLs, and they were published as proposed regulations in the *Federal Register* on November 14, 1985, thus removing the need for the provision in the conference agreement.

LEAD-FREE DRINKING WATER

Senate amendment—The Senate amendment contains a title III provision which would prohibit the use of any pipe, solder or flux in any public water supply system or plumbing use to provide drinking water, require public notification by community water systems to their consumers of the adverse affects of lead in drinking water supplies, provide for state enforcement of these provisions, ban the use of lead solder, pipe or flux in new construction guaranteed by the Department of Housing and Urban Development or the Veterans' Administration, and require labeling or lead solder sold commercially as a hazardous substance under the Federal Hazardous Substances Act.

House amendment—The House amendment contains no comparble provision.

Conference substitute—The conference substitute deletes the Senate amendment. Subsequent to Senate adoption of these provisions in the Superfund amendments, they were also included in the conference report on the Safe Drinking Water Act Amendments of 1986 which become P.L. 99-339.

COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

Senate amendment—The Senate bill contained no provisions relating to comprehensive oil spill pollution liability and compensation.

House amendment—Title IV of the House bill contains the Comprehensive Oil Pollution Liability and Compensation Act of 1986. Title IV proposes major versions to Federal law governing liability and compensation for oil pollution.

Conference substitute—The conference substitute adopts the Senate proposal that current law relating to oil pollution should not be changed in the context of H.R. 2005. The Senate Conferees agree to act on oil pollution liability and compensation legislation separately before the end of the 99th Congress.

TITLE V. SUPERFUND FINANCING

A. Hazardous Substance Response Trust Fund ("Superfund")

1. TRUST FUND PROVISIONS

Prior and Present Law

Superfund financing sources

Amounts equivalent to excise taxes on petroleum and feedstock chemicals (described below) were deposited in the Hazardous Substance Response Trust Fund ("Superfund"). These taxes expired on September 30, 1985.

In addition to taxes, $44 million was authorized to be appropriated to the Superfund from general revenues for each of fiscal years 1981–85 (an aggregate of $220 million). Total tax and general revenue appropriations were intended to equal $1.6 billion over the five-year period.

The following additional amounts also are deposited in the Superfund:

(1) amounts recovered from parties responsible for hazardous substance releases;

(2) penalties assessed against responsible parties; and

(3) punitive damages for failure to provide removal or remedial action upon the order of the President.

Expenditure purposes

Amounts in the Superfund are available for expenditures incurred in connection with releases or threats of releases of hazardous substances into the environment.

Allowable costs include the following:

(1) Costs of responding to the presence of hazardous substances on land or in the water or air, including cleanup and removal of such substances and remedial action.

(2) Certain costs related to response, including epidemiologic studies and maintenance of emergency strike forces.

(3) Payment of assessment and damage claims for injury to, or destruction or loss of, natural resources belonging to or controlled by Federal or State governments. No more than 15 percent of Superfund revenues attributable to taxes and general revenue appropriations may be used for the payment of natural resource assessment and damage claims.

Administrative provisions

Claims against the Superfund may be paid only out of the fund. If claims against the Superfund exceed the balance available for payment of those claims, the claims are to be paid in full in the order in which they are finally determined.

The Superfund has authority to borrow from general Treasury funds for the purposes of paying response costs in connection with a catastrophic spill or paying natural resource damage claims. Outstanding advances at any time may not exceed estimated tax revenues for the following 12 months; advances for paying natural resource claims may not exceed 15 percent of such revenues. All advances were required to be repaid by September 30, 1985.

The Superfund was created as a trust fund in the Treasury under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), but is not included under the trust fund code of the Internal Revenue Code.

Repayable advances

The Superfund taxes expired on September 30, 1985. Since that time, repayable advances have been made to the Superfund from general revenues under P.L. 99–270 ($150 million advance), and P.L. 99–411 ($48 million advance). These advances are to be repaid with interest with revenues derived from future Superfund financing sources.

House Bill

Superfund financing sources

Under the House bill, amounts equivalent to excise taxes on petroleum, feedstock chemicals, a new tax on imported chemical derivatives, and a new waste management tax, are to be deposited in the Superfund for fiscal years 1986–1990. Additional excise taxes on gasoline, diesel, and special motor fuels are to be used to fund a separate trust fund for leaking underground storage tanks.

In addition to taxes, $316.6 million is authorized to be appropriated to the Superfund from general revenues for each of fiscal years 1986–1990 (an aggregate of $1.583 billion). Total tax and general revenue appropriations, together with interest and estimated recoveries, are estimated to equal $10.46 billion over the five-year reauthorization period.[1]

Other financing sources (including recoveries, penalties, and punitive damages) are the same as under present law.

Expenditure purposes

The House bill generally retains the present-law Superfund expenditure purposes. However, no further expenditures are allowed for natural resource assessment and damage claims. Superfund moneys are also to be available for a number of additional expenditure purposes added by Title I of the House bill.

Administrative provisions

The Superfund is established as a trust fund under the Internal Revenue Code. Administrative provisions generally are the same as under present law; however, the Superfund has authority to borrow for any authorized expenditure purpose, rather than only for certain emergency purposes as under present law. Advances are also not to be limited to estimated tax revenues for the following 12 months (as they are under present law).

Transfer of hazardous waste

Under the House bill, no Superfund moneys are to be available for transfer of any hazardous substance from a facility at which a release (or threatened release) has occurred to a facility for which a final permit is in effect under section 3005(a) of the Solid Waste Disposal Act, if (1) such permit was issued after January 1, 1983, and before November 1, 1984; (2) the transfer is carried out pursuant to a cooperative agreement between the EPA and the State; and (3) fund moneys could not be used for the transfer, except for a provision contained in Title I of the House bill.

Effective date

The Superfund trust fund provisions are effective November 1, 1985.

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[1] This figure includes amounts deposited in the Leaking Underground Storage Tank Trust Fund.

Senate Amendment

Superfund financing sources

Under the Senate amendment, amounts equivalent to excise taxes on petroleum, feedstock chemicals, and a new Superfund excise tax on manufacturers are to be deposited in the Superfund for fiscal years 1986–1990. Total Superfund revenues for the five-year reauthorization period (including interest, but not recoveries) are intended to total $7.4 billion.

Other financing sources (including recoveries, penalties, and punitive damages) are the same as under present law.

Expenditure purposes

The Senate amendment retains the present-law Superfund expenditure purposes (including resource assessment and damage claims).

In addition to these expenditure purposes, Superfund moneys are to be available for a number of additional expenditure purposes added by Title I of the Senate amendment, including costs of health assessments and toxicological profiles; technical assistance grants (not to exceed $75,000 per facility); matching grants to States for cleanup and stabilization of contaminated facilities (not to exceed $1 million per year per State); a $15 million pilot program for the removal of lead-contaminate soil; and research and training programs.

Administrative provisions

The Senate amendment generally follows the House bill. However, under the Senate amendment, outstanding advances to the Superfund are limited to estimated tax revenues for the following 12 months (as under present law), with all advances required to be repaid by December 31, 1990. The present-law 15-percent limit on borrowings to pay natural resource assessment and damage claims is also retained.

Transfer of hazardous waste

No provision.

Effective date

These provisions are effective on October 1, 1985.

Conference Agreement

Superfund financing sources

Under the conference agreement, amounts equivalent to excise taxes on petroleum and feedstock chemicals, a new excise tax on imported chemical derivatives, and a new environmental income tax are to be deposited in the Superfund.

In addition to taxes, $250 million of general revenue appropriations are authorized for the Superfund for each of fiscal years 1987–1991, for an aggregate of $1.25 billion. Total tax and general revenue appropriations to the Superfund, together with interest

and estimated recoveries, are intended to equal $8.5 billion over the five-year reauthorization period.[2]

Other financing sources (including recoveries, penalties, and punitive damages) are the same as under present law.

Expenditure purposes

The conference agreement follows the House bill in deleting natural resource damage and assessment claims as a Superfund expenditure purpose. Expenditures are permitted for the remaining present law expenditure purposes and other purposes added by Title I of the conference agreement. These include expenditures authorized under section 111(a) (1), (2), (4), (5), and (6) and section 111(c) (other than section 111(c) (1) and (2)) of CERCLA, as in effect on the date of enactment of the conference agreement. Expenditures also are permitted for purposes authorized by a later-enacted law which is consistent with the purposes of these provisions.

Administrative provisions

The conference agreement follows the House bill, except that advances to the Superfund (including advances in fiscal year 1986) may not exceed estimated tax revenues for the following 24 months. All advances must be repaid by December 31, 1991.

Transfer of hazardous waste

The conference agreement follows the House bill, with a clarifying amendment.

Effective date

The Superfund trust fund provisions are effective on January 1, 1987.

Regulations

A number of provisions of Title V of this conference agreement provide that the Secretary of the Treasury or his delegate is to prescribe regulations. Notwithstanding any of these references, the conferees intend that the Treasury may, prior to prescribing these regulations, issue guidance for taxpayers with respect to the provisions of the conference agreement by issuing Revenue Procedures, Revenue Rulings, forms and instructions to forms, announcements, or other publications or releases. The conferees expect that the Treasury will provide taxpayers with this guidance as soon as feasible.

2. PETROLEUM TAX

Prior Law

An excise tax of 0.79 cent per barrel was imposed on (1) crude oil received at a United States refinery; and (2) petroleum products (including crude oil, natural and refined gasoline, refined and residual oil, and certain other liquid hydrocarbon products) imported

[2] This figure does not include amounts deposited in the Leaking Underground Storage Tank Trust Fund, described below.

into the United States for consumption, use, or warehousing. Revenues equivalent to the tax were deposited in the Superfund.

A credit against the petroleum tax was allowed if tax had previously been imposed with respect to the same product. The petroleum tax expired on September 30, 1985.

House Bill

The petroleum tax is reimposed at a rate of 11.9 cents per barrel, and extended through September 30, 1990. The reimposition of the tax is effective on November 1, 1985.

Senate Amendment

The petroleum tax is extended at its prior-law rate.

The tax generally expires after September 30, 1990. The tax would terminate earlier than September 30, 1990, if cumulative Superfund receipts from taxes and interest during the 5-year period reach $7.5 billion. The tax also would be suspended or terminated under certain circumstances if the unobligated balance of the Superfund exceeds $2.225 billion on September 30, 1988, or $3 billion on September 30, 1989. The extension of the tax is effective on October 1, 1985.

Conference Agreement

Reimposition of petroleum tax

Under the conference agreement, the petroleum tax is reimposed at a rate of 8.2 cents per barrel for domestic crude oil, and 11.7 cents per barrel for imported petroleum products (including imported crude oil).[3] Revenues equivalent to the tax are to be deposited in the Superfund.

The petroleum tax generally expires on December 31, 1991. The tax would terminate earlier than that date if cumulative Superfund tax receipts during the reauthorization period equal or exceed $6.65 billion. Additionally, if (1) on December 31, 1989 or December 31, 1990, the unobligated balance of the Superfund exceeds $3.5 billion, and (2) the Secretary of the Treasury, in consultation with the EPA Administrator, determines that such unobligated balance will exceed $3.5 billion on December 31 of the next following calendar year if no Superfund taxes are imposed during the intervening calendar year, then no tax is to be imposed during the intervening calendar year.

Credit for oil returned to pipeline

The conference agreement directs the Treasury Department to provide rules allowing a credit against the petroleum tax if a refiner removes crude oil from a pipeline, and subsequently returns a portion of such crude oil into a stream of crude oil in the same pipeline. The amount of this credit is to equal the product of (1) the rate of tax imposed on the crude oil removed from the pipeline by the operator and (2) the number of barrels of crude oil returned to

[3] Imported crude oil, which is subsequently received at a United States refinery, is to be taxed at the higher import rate only.

the pipeline by the operator. Petroleum for which a credit is received is treated as not having been subject to tax. This provision is intended to allow a credit in appropriate cases, without requiring the tracing of specific quantities of previously taxed crude oil which is mixed with other crude oil in the pipeline stream.

Effective date

These provisions are effective on January 1, 1987. The credit for certain crude oil returned to a pipeline is to apply to crude oil removed from a pipeline after that date.

3. TAX ON FEEDSTOCK CHEMICALS

Prior Law

Imposition of tax

An excise tax was imposed on the sale of 42 organic and inorganic substances ("feedstock chemicals") by a manufacturer, producer, or importer, at the rates listed in Appendix A (attached). The tax rates were set in 1980 and were limited to the lower of 2 percent of estimated wholesale prices or a cap equal to (1) $4.87 per ton for petrochemicals, and (2) $4.45 per ton for inorganic feedstocks. (Certain chemicals were taxed at lower rates.)

The feedstock chemicals tax applied to chemicals manufactured in the United States (as defined for purposes of the petroleum tax) or imported into the United States for consumption, use or warehousing. If a taxpayer used a taxable feedstock prior to sale, the tax was imposed on such use.

If one taxable chemical was used to produce a second, the tax on the first chemical was allowed as a credit against the second tax (to the extent of that second tax). The feedstock chemicals tax expired on September 30, 1985.

Exceptions to tax

Exceptions to the feedstock chemicals tax were provided for:

(1) butane or methane used as a fuel;

(2) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if used to produce fertilizer;

(3) sulfuric acid produced solely as a by-product of (and on the same site as) air pollution control equipment;

(4) any taxable feedstock to the extent derived from coal;

(5) petrochemicals used to manufacture or produce motor fuel, diesel fuel, aviation fuel, or jet fuel; and

(6) cupric sulfate, cupric oxide, cuprous oxide, zinc chloride, zinc sulfate, barium sulfide or lead oxide which exist in transitory form in the process of refining nontaxable metal ores or compounds into other (or purer) nontaxable compounds.

Treatment of exported feedstocks

No exemption was provided for exports of taxable feedstocks.

Tax treatment of xylene

The Treasury Department had taken the position that xylene includes separated isomers of xylene for purposes of the feedstocks

tax. Thus, the production (or use) of such isomers constituted a taxable event.

Treatment of inventory exchanges

Under proposed Treasury regulations, exchanges of taxable chemicals were treated as sales of such chemicals.

House Bill

Reimposition of tax

The feedstock chemicals tax is reimposed subject to the modifications below, and extended through September 30, 1990.

Tax is imposed on prior-law feedstocks and, additionally, lead. The tax rates are set at the lower of 2.0 percent, of current estimated wholesale price or a cap equal to $6.25 for all chemicals (except xylene, discussed below), but not lower than the prior-law rate for any taxed chemical (see Appendix A).

Beginning in 1987, the tax rates are to be indexed annually for inflation, as measured by the average producer price index for organic or inorganic chemicals; however, tax rates are not to be reduced below the 1986 rates.

Under a special rule, the tax on nitric acid used by the producer to produce nitrocellulose could not exceed 24 cents per ton. The reimposition of the tax is effective on November 1, 1985.

Exceptions to tax

The exception for coal-derived feedstocks is repealed; other prior-law exceptions are retained. A conforming amendment is made adding lead to the substances which are exempt from tax if they exist in transitory form as part of a refining process.

In addition to the prior-law exceptions, exceptions to the feedstocks tax are provided for the following substances:

(1) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if used (or sold for ultimate use) in the manufacture or production of animal feed; and

(2) domestically recycled nickel, chromium, cobalt, or lead. (This exception does not apply for a period during which a required corrective action under RCRA or CERCLA has not been completed by the taxpayer.)

Effective date.—These provisions are effective on November 1, 1985.

Treatment of exported feedstocks

Taxable feedstocks sold for export by the manufacturer or producer, or for resale by a second purchaser for export, are exempt from tax.

If tax is paid on a chemical, and the chemical is later exported, a credit or refund is allowed to the person who paid the tax.

Effective date.—This provision is effective on November 1, 1985.

Tax treatment of xylene

It is clarified that, except for imports and exports, xylene does not include separated isomers for purposes of the feedstock tax.

Separation of xylene isomers constitutes use of a mixed stream of xylene and is treated as a taxable event.

Effective date.—This provision generally is effective November 1, 1985.

Taxes previously imposed on xylene (i.e., since April 1, 1981) are to be refunded or credited (with interest) to the taxpayers. To compensate for lost revenues, the tax rate on xylene is prospectively increased above the $6.25 per ton rate that otherwise would apply under the House bill (see Appendix A).

Treatment of inventory exchanges

Subject to registration and notification requirements, if inventories of taxable chemicals are exchanged, tax is imposed only upon the later sale or use of the chemical by the person receiving the chemical in the exchange. This rule does not apply if the receiving person would not be taxable on the sale of the chemical, unless such treatment would be as a result of the exemption for exported feedstocks (described above).

Effective date.—The amendment regarding inventory exchanges applies retroactively to the original effective date of the feedstocks tax. However, the amendment applies to any exchange before January 1, 1986, only if (1) the manufacturer, producer, or importer did not treat the exchange as a taxable sale, and (2) the recipient agrees to be treated as the taxable person for purposes of the tax.

The registration and notification requirements with respect to inventory exchanges apply to exchanges after December 31, 1985.

Senate Amendment

Extension of tax

Under the Senate amendment, the feedstocks tax is extended at its prior-law rates (see Appendix A).

The tax generally expires after September 30, 1990. Provisions are made for earlier suspension or termination of the tax under the same conditions as the petroleum tax (see A.2., above).

Effective date.—The extension of the tax is effective on October 1, 1985.

Exceptions to tax

The Senate amendment retains the prior-law exceptions to the feedstock tax, including the exception for coal-derived feedstocks.

As under the House bill, exceptions to the tax are added for:

(1) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if used (or sold for ultimate use) in the manufacture or production of animal feed; and

(2) domestically-recycled nickel, chromium, or cobalt. (Lead is not taxed under the Senate amendment.)

The exception for recycled substances does not apply for any period during which the taxpayer has been notified that it is a potentially responsible party for a site listed on the National Priorities List, unless the taxpayer is in compliance with all orders, notices, and judgments (under RCRA or CERCLA) with respect to the site.

Effective date.—This provision is effective on October 1, 1985.

Treatment of exported feedstocks

The Senate amendment is the same as the House bill.

Effective date.—This provision is effective on October 1, 1985.

Tax treatment of xylene

No provision.

Treatment of inventory exchanges

The Senate amendment is the same as the House bill but does not include the requirement that, for pre-1986 exchanges, the recipient must agree to be treated as the taxable person in order for the amendment to apply.

Conference Agreement

Reimposition of tax

The conference agreement follows the Senate amendment by reimposing the tax on feedstock chemicals at its prior law rates (except in the case of xylene, discussed below). No tax is imposed on lead or on any other chemical not taxed under prior law.

The tax on feedstock chemicals generally expires on December 31, 1991. The tax would be suspended or terminated earlier than that date under the same conditions as the petroleum tax.

Effective date.—The reimposition of the tax is effective on January 1, 1987.

Exceptions to tax

The conference agreement follows the Senate amendment by retaining the present law exception for coal-derived feedstocks. Other present law exceptions also are retained.

The conference agreement follows the House bill and the Senate amendment by providing additional exceptions for:

(1) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if such chemicals are used (or sold for ultimate use) in the manufacture or production of animal feed, and

(2) domestically recycled nickel, chromium, or cobalt.

As under the House bill, the recycling exception does not apply for any period during which a required corrective action under RCRA or CERCLA with respect to the recycling unit has not been completed by the taxpayer. Under a special rule, corrective actions (or the portions of corrective actions) relating to contamination of groundwater are to be treated as completed, for purposes of the recycling exception only, 10 years after the date on which the corrective action is required by the EPA Administrator (or a State acting pursuant to an authorized program). This special rule applies only if the taxpayer is in compliance with all orders, notices, and judgments under RCRA or CERCLA with respect to the site.

Effective date.—These provisions are effective on January 1, 1987.

Treatment of exported feedstocks

The conference agreement follows the House bill and the Senate amendment.

In addition to exempting exported feedstocks, the conference agreement allows a credit or refund (without interest) of taxes on feedstock chemicals which are used as materials in the manufacture or production of certain exported substances. The exported substances which trigger this credit or refund are to be the same as the substances taxed under the new tax on imported chemical derivatives (described in A.4, below). The credit or refund is to be made to the person who paid the feedstocks tax.[4]

Effective dates.—The exception for exported feedstocks is effective on January 1, 1987.

The allowance of a credit or refund for feedstocks used in the manufacture or production of certain exported substances is effective on January 1, 1989.

Tax treatment of xylene

The conference agreement follows the House bill.

Effective date.—This provision generally is effective on January 1, 1987.

Taxpayers who previously paid the tax imposed on xylene (i.e., from April 1, 1981, through September 30, 1985) may file claim for refund of the tax (with interest). The statute of limitations is extended to permit such refunds or credits. Such credits or refunds apply, under the conference agreement, only if the person who would otherwise be liable for the tax meets requirements similar to the general Code rules regarding credits or refunds of manufactures' or retailers' excise taxes (sec. 6416(a)).[5] However, if the manufacturer separately stated the tax and the purchaser did not pay the tax, then the refund or credit is allowable to the manufacturer. To compensate for lost revenues, the tax rate on xylene is temporarily increased, only for the duration of the five-year reauthorization period, from $4.87 to $10.13 per ton.

Treatment of inventory exchanges

The conference agreement follows the House bill.

Effective date.—The amendment regarding inventory exchanges applies retroactively to the original effective date of the feedstocks tax (April 1, 1981). However, the amendment applies to any exchange before January 1, 1987, only if (1) the manufacturer, producer, or importer did not treat the exchange as a taxable sale, and (2) the recipient agrees to be treated as the taxable person for purposes of the tax.

The registration and notification requirements with respect to inventory exchanges apply to exchanges after December 31, 1986.

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[4] As in the case of exported feedstocks, this person is required to repay the amount of tax to the exporter, or obtain the exporter's written consent to the credit or refund, in order to receive the credit or refund.

[5] In general, sec. 6416(a) allows a credit or refund only if the person who paid the tax establishes under regulations that he (1) has not included the tax in the price of the article and has not collected the amount of tax from the purchaser, or (2) has repaid the amount of tax to the ultimate purchaser of the article, or obtained his written consent to the purchase or refund.

Treatment of mixed hydrocarbon streams containing taxable feedstocks

Under the conference agreement, no tax is imposed on any organic taxable chemical while it is part of an intermediate hydrocarbon stream containing a mixture of different organic taxable chemicals. Instead, the isolation, extraction, or other removal of an organic taxable chemical from such a stream (or any other event causing the chemical to cease being part of the stream) is treated as a taxable use by the person causing such removal, and the tax is imposed on such person. This provision applies only if registration and certification requirements, similar to those imposed with respect to inventory exchanges, are satisfied. For purposes of this provision, organic taxable chemicals include any taxable feedstock chemical which is an organic substance.[6]

Effective date.—This provision applies retroactively to the original effective date of the feedstocks tax (April 1, 1981). As in the case of the rule regarding inventory exchanges, the provision applies to sales of any intermediate hydrocarbon stream before January 1, 1987, only if (1) the manufacturer, producer, or importer of the mixed hydrocarbon stream did not treat the sale of such stream as a taxable sale, and (2) the purchaser agrees to be treated as the taxable person for purposes of the tax.

The registration and notification requirements with respect to mixed hydrocarbon streams are effective on January 1, 1987.

4. TAX ON IMPORTED CHEMICAL DERIVATIVES

Prior Law

Crude oil, certain petroleum products, or taxable feedstock chemicals imported into the United States were subject to the petroleum or feedstocks tax (see A.2. and A.3., above). No tax was imposed on imports of products that are derived from these materials.

House Bill

Imposition of tax

A tax is imposed on the sale of any listed chemical derivative by the importer thereof. The initial list includes 47 chemical derivatives (see Appendix B).

The Secretary of the Treasury is to list any other imported substances determined to have more than 50 percent of their value derived from petroleum or taxable feedstock chemicals used as materials or process fuel. This determination is to be based on the predominant method of production. The Treasury may delist substances (including initially listed substances) as necessary to carry out the purposes of the tax.

Substances are taxable only if listed at the time of sale or use by the importer.

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[6] Taxable organic chemicals include the first 11 listed substances in section 4661 of the Code (acetylene, benzene, butane, butylene, butadiene, ethylene, methane, naphthalene, propylene, toluene, and xylene).

Amount of tax

The amount of tax is—

(1) the amount of tax which would have been imposed under the feedstocks tax on the taxable chemicals used as materials or process fuel, if such taxable chemicals had been sold in the United States for an equivalent use; or

(2) if the importer does not furnish sufficient information to determine the tax under (1) above, 5 percent of the appraised value of the imported substance at the time of import.

Procedure and definitions

The tax is imposed on the importer of a listed substance at the time such substance is sold or used. No tax is imposed if the petroleum or feedstock chemical taxes are imposed on the same sale or use.

The United States includes Puerto Rico and specified U.S. possessions (as defined for purposes of the petroleum and feedstock taxes).

Revenues from the tax are not covered over to Puerto Rico or the Virgin Islands under section 7652 of the Code.

Termination date

The tax terminates on September 30, 1990.

Effecive date

The tax on imported chemical derivatives is effective on January 1, 1987.

Senate Amendment

No provision.

Conference Agreement

The conference agreement generally follows the House bill with an amendment.

Under the conference agreement, the amount of tax imposed on a listed imported chemical derivative is the amount of tax which would have been imposed by the feedstocks tax on the taxable chemicals used as materials (and not process fuel) if such taxable chemicals had been sold in the United States for an equivalent use.

If the importer does not furnish sufficient information (at such time and manner as the Secretary may require) the amount of tax is 5 percent of the customs value of the imported chemical derivative.

Under the conference agreement, a chemical derivative must be listed by the Secretary of the Treasury in order to be subject to this tax.

An initial list of taxable substances is specified in the statute. This initial list includes the 47 chemical derivatives in the House bill, as well as acrylonitrile and methanol. The Secretary may delist substances (including statutorily listed substances) as necessary to carry out the purposes of the tax; however, acrylonitrile may not be delisted.

In addition, the Secretary is to add chemical derivatives to this list if taxable feedstocks (under sec. 4661) comprise over 50 percent of the molecular weight of the raw materials used to produce the chemical derivative. The Secretary is to make this determination on the basis of the predominant method of production (with respect to imported derivatives) using stoichiometric material consumption assuming a 100-percent yield.

The Secretary may also add a chemical derivative to the list if taxable feedstocks comprise over 50 percent of the value of the raw materials used to produce the chemical derivative.

The provision is effective for imports of chemical derivatives on or after January 1, 1989.

The conference agreement also provides that the Secretary shall conduct a study of issues related to the implementation of the tax on imported chemical derivatives and the credit allowable for taxable feedstocks used in the production of exported chemical derivatives. This study is to be done after consultation with both the Administrator of the Environmental Protection Agency and the International Trade Commission. The report of the study is to be submitted to the House Committee on Ways and Means the Senate Committee on Finance no later than January 1, 1988.

5. WASTE MANAGEMENT TAX

Present Law

No provision. (A dry-weight tax on hazardous waste was imposed for purposes of funding the Post-closure Liability Trust Fund, discussed in A.7., below; the authority to collect this tax expired on September 30, 1985.)

House Bill

Imposition of tax

Under the House bill, an excise tax is imposed on the disposal, treatment or export of hazardous waste. A "back-up" tax, discussed below, is also imposed on hazardous waste that is not otherwise the subject of a taxable event within 270 days of generation, and that is not exempt from the waste management tax.

The tax is imposed on (1) the receipt of hazardous waste at a qualified hazardous waste management unit, (2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and (3) the export of hazardous waste from the United States. A "qualified hazardous waste management unit" means the specified area of land or structure which isolates hazardous wastes within a qualified hazardous waste management facility, and which is subject to interim status or final permit requirements under subtitle C of the Solid Waste Disposal Act. A "qualified hazardous waste management facility" means any facility (as defined under subtitle C of the Solid Waste Disposal Act) which has received a permit or interim status under section 3005(c) of the Solid Waste Disposal Act or an authorized State program.

Hazardous waste is defined as any waste which is listed or identified under section 3001 of the Solid Waste Disposal Act as of the date on enactment, and which is not subsequently delisted. Thus,

wastes the regulation of which has been suspended under present law (e.g., certain mining wastes) are not subject to the tax.

Tax rates

Under the House bill, the amount of tax imposed per ton of hazardous waste (on a wet-weight basis) is determined in accordance with the following table:

If the taxable event is:

	Land disposal (tax per ton)	Any other taxable event
For calendar year:		
1986	$37	$4.15
1987	39	4.15
1988	42	4.15
1989	44	4.15
1990	47	4.15

The land disposal rate applies to hazardous waste received at a landfill, surface impoundment, waste pile, or land treatment unit, each as defined by EPA pursuant to sections 3004 and 3005 of the Sclid Waste Disposal Act. The land disposal rate does not apply to surface impoundments which are part of waste water treatment systems or of deep well injection units.

The lower (i.e., $4.15 per ton) tax rate applies to all other taxable events, including (1) ocean disposal of hazardous waste, (2) export of hazardous waste, and (3) receipt of hazardous waste at other qualified hazardous management units (i.e., other than for land disposal) including deep well injection facilities. For this purpose, deep well injection facilities include any containers, tanks, or surface impoundments principally used to treat or store hazardous waste before underground injection.

Exemptions and credits

Waste water treatment.—Hazardous waste received at a waste water treatment unit is exempt from tax unless a corrective action order remains uncompleted with respect to the facility. A waste water treatment unit is any qualified hazardous waste management unit which is an integral and necessary part of a waste water treatment system, other than a unit which receives concentrated treatment residues for storage or final disposition.

The exemption for waste water treatment units is not allowed with respect to any activity conducted at a facility (or part thereof) while a required corrective action remains uncompleted with respect to such facility (or part of such facility). If a corrective action is uncompleted, tax is imposed at a rate of 15 cents per ton on waste received at the waste water treatment unit.

Incineration.—A credit or refund of tax (without interest) is provided for waste that is incinerated on land (or the equivalent of inceration on land) within 90 days after the date on which such waste is first received at a qualified hazardous waste management unit.

Qualified chemical fuels or solvents.—A credit or refund is provided (without interest) for tax imposed on waste used in the pro-

duction of any qualified chemical fuel or solvent for use in any commercial or industrial application. A qualified chemical fuel or solvent is any chemical fuel or solvent determined by the Administration not to be hazardous.

Recycling of batteries.—A credit or refund (without interest) is provided for tax paid on the receipt of a battery at a qualified hazardous waste management unit if recycling of such battery commences within 90 days of receipt.

Corrective and remedial actions.—Exemptions are provided in the following cases:

(1) receipt or export of hazardous waste pursuant to corrective actions required by an order or permit issued by the EPA Administrator under the Solid Waste Disposal Act (or by a State under an authorized program);

(2) receipt or export of hazardous waste pursuant to a proposed or final closure plan approved by the Administrator or an authorized State;

(3) receipt or export of hazardous waste pursuant to a removal or remedial action under CERCLA, if the response action has been selected or approved by the EPA Administrator; or

(4) receipt or export of hazardous waste pursuant to an action to correct an emergency situation arising from a product spill which is certified by the Administrator to the Secretary as carrying out the purposes of CERCLA.

Federally-owned facilities.—Hazardous waste received at a federally owned facility is not subject to the tax.

Payment of tax.—The waste management tax is payable by (1) the owner or operator of a qualified hazardous waste management unit; (2) in the case of ocean disposal, the owner or operator of the vessel or aircraft engaged in ocean disposal; or (3) in the case of export, the exporter of hazardous waste.

Termination date

The waste management tax generally expires on September 30, 1990.

Effective date.—The tax is effective with respect to hazardous waste received or exported after December 31, 1985.

"Backup" tax on generation and hazardous waste

A "backup" tax is imposed on hazardous waste which 270 days after generation has not been (1) received at a qualified hazardous waste management unit, (2) received for transport from the United States for the purpose of ocean disposal, or (3) exported from the United States. The generator of the waste is liable for the tax.

The backup tax is imposed at the rate applicable for land disposal. However, the Treasury Department may prescribe regulations which provide exemptions from the backup tax (or a reduced rate) as may be consistent with the purposes of the backup tax.

The backup tax does not apply to waste generated after September 30, 1990.

Effective date.—The backup tax is effective with respect to hazardous waste generated after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

6. ENVIRONMENTAL TAX

Present Law

Alternative minimum taxable income

Under the conference agreement on the Tax Reform Act of 1986 (H.R. 3838),[7] as passed by the House on September 25, 1986, and the Senate on September 27, 1986, an alternative minimum tax is imposed on corporations. The tax rate is 20 percent, and there is a $40,000 exemption amount (phased out at the rate of 25 cents on the dollar for alternative minimum taxable income in excess of $150,000).

The items of tax preference include accelerated depreciation in excess of the alternative depreciation system for property (other than transitional property) placed in service after 1986; intangible drilling costs (with an offset for 65 percent of net oil and gas income); percentage depletion (in excess of the adjusted basis of the property); bad debt reserve deductions for financial institutions; use of the completed contract method of accounting and of the installment method; capital construction funds for shipping companies; 60-month amortization of certified pollution control facilities; and mining exploration and development costs. Tax-exempt interest on newly issued private activity bonds (but not qualified 501(c)(3) bonds), and untaxed appreciation on charitable contributions of appreciated property, also are preference items.

For 1987 through 1989, one-half of the excess of pre-tax book income of the taxpayer (including members of a group filing a consolidated tax return for the year), over other alternative minimum taxable income, is a preference. After 1989, pre-tax book income is replaced for this purpose by adjusted current earnings.

These provisions apply generally to taxable years beginning after December 31, 1986. The treatment of interest on private activity bonds as a preference item applies to bonds issued after August 7, 1986, except that in the case of certain bonds treated as governmental under prior law, such treatment applies to bonds issued on or after September 1, 1986.

Manufacturer's excise tax

Present law imposes selective excise taxes on the sale by the manufacturer of tires, petroleum products, coal, and certain recreational equipment.

House Bill

No provision.

[7] See H. Rep. 99-841, September 18, 1986.

Senate Amendment

Imposition of tax

The Senate amendment imposes an excise tax on the sale, lease, or transfer of tangible personal property by the manufacturer of the property, in connection with a trade or business (Superfund Excise Tax). Revenues equivalent to the tax are to be deposited in the Superfund.

The tax is equal to 0.08 percent of the sales price of, or gross lease payments for, the property (i.e., $8 of tax per $10,000 of taxable amount). Tax is also imposed (at the same 0.08-percent rate) on importers of tangible personal property based on the customs value plus duties (or, if no customs value is available, the fair market value) of the imported property.

For purposes of the tax, "manufacturing" includes mining, raw material production, and the production of tangible personal property. Manufacturing does not include services incidental to storage or transportation of property; preparation of food in a restaurant or other retail establishment; or incidental preparation of property by a wholesaler or retailer. "Tangible personal property" includes natural gas and other gaseous products and materials. Tangible personal property does not include electricity, unprocessed agricultural products, or unprocessed food products.

The tax is deductible from Federal income taxes.

Credit against tax

A credit equal to 0.08 percent of the taxpayer's qualified inventory costs is allowed against the tax.

"Qualified inventory costs" are amounts paid or incurred for purchases of tangible personal property and which are allocable to the inventory of a manufacturer using the full absorption accounting method (unless otherwise provided in regulations). Property manufactured for lease is treated in the same manner as property manufactured for sale.

In lieu of any allowance for depreciation or amortization, qualified inventory costs include amounts paid or incurred for depreciable or amortizable property (i.e., expensing treatment).

A taxpayer who includes the cost of tangible personal property in qualified inventory costs is treated as the manufacturer of the property if the property is subsequently sold or leased.

Credits may be carried forward to later taxable years, but may not be refunded.

Exemptions

Small manufacturers.—A manufacturer with $5 million or less of annual taxable receipts is effectively exempt from the tax, by means of a minimum $4,000 allowable credit. This minimum credit is not available to importers, is not refundable, and may not be carried over.

Small imports, exports, and tax-exempt entities.—Additional exemptions from the tax are provided for the following: (1) import shipments with an aggregate value of $10,000 or less; (2) exports from the United States, and (3) items sold or leased (but not imported) by governmental units or organizations exempt from tax-

ation under section 501(a) (other than in unrelated trades or businesses).

Termination date

The tax terminates after December 31, 1990. The tax would be suspended or terminated earlier under similar conditions as the petroleum and feedstock chemical taxes (see A.2 and A.3., above).

Effective date

The tax is effective on January 1, 1986.

Conference Agreement

The conference agreement provides a new environmental tax generally based on corporate alternative minimum taxable income ("AMTI"). AMTI is defined in the same manner as in the Tax Reform Act of 1986 (H.R. 3838), which the conferees expect will be signed into law before the effective date of this provision.

The amount of tax is equal to 0.12 percent ($12 of tax per $10,000 of AMTI) of the excess of AMTI, without regard to net operating losses and the deduction for this tax, over $2 million. The $2 million exemption is aggregated for taxpayers that are component members of a controlled group of corporations (as defined in sec. 1563). The environmental tax is imposed whether or not the taxpayer is subject to the alternative minimum tax. The environmental tax is deductible from gross income. No credits are allowable against the environmental tax. In addition, the rules for estimated tax, penalties, and refunds that apply to the corporate income tax also apply to the environmental tax.

The environmental tax is effective for taxable years beginning after December 31, 1986. The environmental tax is not imposed if any taxable year beginning during a calendar year in which the petroleum and chemical feedstocks taxes are not imposed. Thus, the environmental tax is not imposed in taxable years beginning after December 31, 1991, and will be terminated (or suspended) sooner if the petroleum and chemical feedstocks taxes are terminated (or suspended) before this date. The effective date and termination provisions are designed to impose the environmental tax for the same number of taxable years, regardless of when a corporation's taxable year begins. Rules for the imposition of the environmental tax for taxable years of less than 12 months shall be prescribed by the Secretary.

7. LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND TAX

Present Law

Petroleum releases and releases of natural or synthetic gases are not covered by the Superfund. (Some petroleum releases are specifically covered by other environmental laws.)

Excise taxes are imposed on gasoline and special motor fuels (9 cents per gallon), diesel fuel (15 cents per gallon), aviation gasoline (12 cents per gallon), aviation jet fuel (14 cents per gallon), and fuel used on inland waterways (10 cents per gallon). Revenues from these fuel taxes are dedicated to specific trust funds.

House Bill

Establishment of trust fund

A separate Leaking Underground Storage Tank Trust Fund is established, to be available for cleanup and related costs associated with leaking underground storage tanks containing petroleum products.

This Trust Fund generally is intended to be used to pay cleanup and releated costs involving tanks where no solvent owner can be found, or when the owner or operator refuses or is unable to comply with an urgent corrective order. This Trust Fund would also be available to provide grants to States carrying out these purposes.

Financing of trust fund

The Leaking Underground Storage Tank Trust Fund is to be funded by:

(1) An additional 0.2-cent per gallon tax on gasoline, diesel fuel, and special motor fuels sold by a producer or importer; liquid fuels (other than gasoline) used in motor vehicles, motor boats, and trains; liquid aviation fuels; and fuels used in commercial transportation on inland waterways. These additional taxes generally use the tax base and collection procedures of the present-law excise taxes on these fuels (Code secs. 4041, 4042, and 4081).

(2) Interest on balances in this Trust Fund.

(3) Recoveries from responsible parties under section 9003(h) of the Solid Waste Disposal Act.

Termination of tax

The additional taxes expire on September 30, 1990. However, no further taxes are to be imposed if, before September 30, 1990, cumulative revenues from these taxes exceed $850 million.

Effective date

These provisions are effective on November 1, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill in establishing a Leaking Underground Storage Tank Trust Fund. The conference agreement also follows the House bill as to the financing of the Trust Fund, except that the tax is imposed at the rate of 0.1 cent per gallon. This tax is not imposed on liquified petroleum gas. A reduced rate of 0.05 cent per gallon is imposed on methanol.

This provision is effective on January 1, 1987. It expires on December 31, 1991. If, prior to the date, the net revenues from the taxes impose to fund the Leaking Underground Storage Tank Trust Fund exceed $500 million, than those taxes will expire on the last day of the month in which that occurs.

B. Post-Closure Liability Trust Fund and Tax

Present Law

A separate trust fund, the Post-Closure Liability Trust Fund, is to assume completely the liability of owners and operators of hazardous waste disposal facilities that have been granted permits and have been properly closed under Subtitle C of the Resource Conservation and Recovery Act. (RCRA). The Trust Fund also may be used to pay certain monitoring and maintenance costs.

Revenues from an excise tax on hazarsous waste were deposited in the Trust Fund. The tax of $2.13 per dry weight ton expired on September 30, 1985.

House Bill

The House bill repeals the Post-Closure Liability Trust Fund and tax, effective October 1, 1983 (the original effective date of the tax). To effect this retroactive repeal, taxpayers who paid this tax may file claims for refunds of the tax, plus interest.

Senate Amendment

The Senate amendment repeals the Post Closure Liability Trust Fund and tax effective October 1, 1985, and transfers the unobligated balance in this Trust Fund to the Superfund. Amounts in the Trust Fund are to be refunded (proportionately to taxes paid, but without interest) effective March 1, 1989, unless by that date the Congress authorizes a transfer or assumption of post-closure liability in response to a study required to be made by EPA.

Conference Agreement

The conference agreement follows the House bill. The statute of limitations is extended so that taxpayers who paid this tax may file claims for refunds.

C. Oil Spill Liability Trust Fund and Tax

1. OIL SPILL LIABILITY TRUST FUND

Present Law

Funds relating to oil spill damages and cleanups have been created under various Federal statutes, including:

(1) section 311(k) of the Federal Water Pollution Control Act (Clean Water Act) ($35 million revolving fund for oil spill cleanups, supported by fines, penalties, and general revenue appropriations);

(2) the Trans-Alaska Pipeline Authorization Act ($100 million fund, financed primarily by a 5-cents-per-barrel fee on oil passing through the pipeline);

(3) the Deepwater Port Act of 1974 ("Deepwater Port Liability Fund") ($100 million fund, financed by a 2-cents-per-barrel fee on oil loaded at a deepwater port); and

(4) the Outer Continental Shelf Act Amendments of 1978 ("Offshore Oil Pollution Compensation Fund") ($200 million

fund with respect to offshore oil spills, financed by a maximum 3-cents-per-barrel fee on owners of offshore oil).

There is no general oil spill liability and compensation trust fund.

House Bill [8]

In general

An Oil Spill Liability Trust Fund is established in the Treasury, to be funded in part by a 1.3-cents-per-barrel excise tax on domestic crude oil and imported petroleum products.

Amounts in the Oil Spill Fund are available for removal costs, certain damages sustained by U.S. claimants, and certain related costs associated with oil spills. Claimants generally would have the option of proceeding against the responsible party or recovering against the Fund, which could then proceed against the responsible party. The legislation would constitute an exclusive remedy for claims covered by the Fund.

Liability of responsible parties is to be on a strict, joint, and several basis, with liability limits consistent with international agreements.

Excess amounts remaining in the fund created by section 311(k) of the Federal Water Pollution Control Act are transferred to the general fund of the Treasury.

Uses of fund

Amounts in the Oil Spill Fund are available only for the following purposes:

(1) Payment of costs incurred in cleaning up or preventing oil pollution from vessels or offshore facilities ("removal costs"), under the Federal Water Pollution Control Act, the Deepwater Port Act, and the Intervention on the High Seas Act.

(2) Claims for injury to, or destruction of, real or personal property.

(3) Claims for loss of subsistence use of natural resources.

(4) Payment of otherwise uncompensated economic loss sustained by any U.S. claimant as a result of oil spills from vessels or offshore facilities. Compensable damages would include lost earnings and profits if: (a) the loss is 25 percent or more of the claimant's earnings; or (b) in the case of seasonal activities, 25 percent of seasonal earnings are derived from affected activities.

(5) Payment of contributions to the International Fund for Compensation for Oil Pollution Damage, if the conventions establishing this fund come into force with respect to the United States. Under regulations, contributions to the International Fund would be allowed only in proportion to the portion of such Fund used for purposes that are consistent with the uses of the domestic Oil Spill Fund.

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[8] Similar provisions are included in H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, as reported by the House Committee on the Budget on July 31, 1985 (H. Rep. 99–727), and as passed by the House on September 24, 1986.

(6) Administrative costs, but only to the extent necessary for an incidental to the implementation of the Comprehensive Oil Pollution Liability and Compensation Act.

Payments to any governmental unit, under any item above, are permitted only for removal costs and administrative expense related to removal costs.

The liability of the Oil Spill Fund could not exceed $200 million for any single incident. Additionally, no payment could be made (except for removal costs) to the extent that the payment would reduce the Fund balance below $30 million.

Claims against the Fund could be paid out of the Oil Spill Fund only. If the Fund is insufficient to pay all claims, claims are to be paid in full in the order in which finally determined.

Revenue sources

Under the House bill, the following amounts are to be deposited in the Oil Spill Fund:

(1) Amounts equivalent to a 1.3-cent-per-barrel excise tax on domestic crude oil and imported petroleum products, using the tax base for the Superfund petroleum tax (see C.2., above).

(2) Amounts recovered, collected, or received from responsible parties under the Comprehensive Oil Pollution Liability and Compensation Act. (Penalties with respect to payment of taxes would not be deposited in the Oil Spill Fund.)

(3) Amounts remaining in the Deepwater Port Liability Fund and the Offshore Oil Pollution Compensation Fund, as of the date of enactment.

(4) Interest earned on Oil Spill Fund investments.

(5) The proceeds of authorized borrowing by the Oil Spill Fund, not to exceed $300 million in outstanding indebtedness at any time.

(6) Penalties and recoveries under the Federal Water Pollution Control Act.

Administrative provisions

The Oil Spill Liability Trust Fund is established as a trust fund in the Internal Revenue Code.

The Trust Fund is authorized to borrow, as repayable advances, up to $300 million at any one time to carry out the purposes of the Fund.

Effective date

The Oil Spill Fund trust fund provisions are effective on January 1, 1986.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision of the House bill.

2. OIL SPILL TAX

Present Law

No provision. (A tax on petroleum was imposed for deposit in the Superfund; see A.2., above.)

House Bill [9]

Imposition of tax

An excise tax of 1.3 cents per barrel is imposed on domestic crude oil and imported petroleum products, in addition to the 11.9-cents-per-barrel tax imposed on this base for the Superfund (see A.2., above). This tax uses the same tax base, and is subject to the same administrative provisions, as the Superfund petroleum tax.

A non-transferable credit against the oil spill tax is allowed (to the extent of prior contributions) for persons who contributed to the Deepwater Port Liability Fund or the Offshore Oil Pollution Compensation Fund. (The balance in these funds is to be transferred to the Oil Spill Fund.)

Termination of tax

This tax terminates after September 30, 1990.

Effective date

The tax is effective after December 31, 1985.

Senate Amendment

No provision. (The Senate amendment continues the prior-law Superfund petroleum tax.)

Conference Agreement

The conference agreement does not include the provision of the House bill.

D. Tax-Exempt Bonds for Hazardous Waste Treatment Facilities

Present Law

Tax-exempt industrial development bonds ("IDBs") may be issued to finance solid waste disposal facilities (sec. 103(b)(4)(E)). Facilities for the disposal of liquid or gaseous waste (including liquid and gaseous hazardous wastes) do not qualify for this financing.

Under the conference agreement on the Tax Reform Act of 1986 (H.R. 3838),[10] as passed by the House on September 25, 1986, and the Senate on September 27, 1986, tax-exempt private activity bonds may be issued to finance qualified hazardous waste facilities. These include facilities for the land incineration or the permanent entombment of hazardous waste, which facilities are subject to

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[9] Similar provisions are included in H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, as reported by the House Committee on the Budget, July 31, 1986, and as passed by the House on September 24, 1986.

[10] See H. Rep. 99-841, September 18, 1986.

final permit requirements under subtitle C of Title II of the Solid Waste Disposal Act, as in effect on the date of enactment of the conference agreement. Tax-exempt financing is available under this provision only for facilities (or the portion of a facility) to be used by the general public, and is subject to certain limitations, including the volume and other limitations applicable to private activity bonds generally.

House Bill

No provision.

Senate Amendment

The Senate amendment allows tax-exempt IDBs to be issued to finance facilities for the treatment of hazardous waste, as these terms are defined under sec. 1004 of the Solid Waste Disposal Act (i.e., RCRA). This exemption is limited to facilities which are subject to final permit requirements under RCRA. Bonds issued under this provision would be subject to the volume and other restrictions applicable to solid waste IDBs under present law.

This provision is effective for bonds issued after the date of enactment.

Conference Agreement

The conference agreement does not include the provision of the Senate amendment.

E. Hazardous Waste Removal Costs Treated as Qualifying Distributions by Private Foundations

Present Law

To avoid penalty excise taxes, a private foundation must annually make expenditures or grants for charitable purposes in an amount (the "distributable amount") equal to 5 percent of the fair market value of its investments (Code sec. 4942).

House Bill

No provision.

Senate Amendment

Subject to certain limitations, the distributable amount of a private foundation (under sec. 4942) is to be reduced by amounts paid or incurred or set aside by the foundation for removal or remedial action with respect to a hazardous substance release at a facility that was owned or operated by the foundation.

This provision is effective for taxable years beginning after December 31, 1982.

Conference Agreement

The conference agreement does not include the provision of the Senate amendment.

F. Studies

1. ALTERNATIVE FINANCING MECHANISMS

Present Law

Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), EPA prepared the following study: "The Feasibility and Desirability of Alternative Tax Systems for Superfund: CERCLA section 301(a)(1)(G) Study," United States Environmental Protection Agency (December 1984).

House Bill

No provision.

Senate Amendment

The General Accounting Office (GAO) is directed to report by January 1, 1988, its findings on various mechanisms for financing the Superfund, including a study on the effect of a tax on hazardous waste on the generation and disposal of such waste.

Conference Agreement

The conference agreement does not include the provision in the House bill.

2. EFFECT OF WASTE MANAGEMENT TAX

Present Law

No provision.

House Bill

The Secretary of the Treasury is directed to study the effects of the waste management tax on the ability of domestic manufacturers to compete in international trade, and to report to Congress by July 1, 1986.

Senate Bill

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill

3. STUDY OF LEAD POISONING

Present Law

No provision.

House Bill

The House bill directs the Administrator of the Agency for Toxic Substances and Disease Registry to study the nature and extent of lead poisoning in children from environmental sources, and to report to Congress by March 1, 1986. The cost of this study is authorized to be paid out of the Superfund.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

G. Appendices

APPENDIX A.—EXCISE TAX RATES ON FEEDSTOCK CHEMICALS UNDER PRIOR LAW AND HOUSE BILL

Substance	Prior law rate	House bill proposed fiscal year 1986 rate [1]
Organic substances:		
Acetylene	4.87	6.25
Benzene [2]	4.87	6.25
Butadiene	4.87	6.25
Butane	4.87	5.54
Butylene	4.87	6 25
Ethylene	4.87	6.25
Methane	3.44	3.44
Naphthalene [2]	4.87	6.25
Propylene	4.87	6.25
Toluene [2]	4.87	6.25
Xylene [2]	4.87	[3] 11.19
Inorganic substances:		
Ammonia	2.64	4.20
Antimony	4.45	6.25
Antimony trioxide	3.75	6.25
Arsenic	4.45	6.25
Arsenic trioxide	3.41	6.25
Barium sulfide	2.30	6.25
Bromine	4.45	6.25
Cadmium	4.45	6.25
Chlorine	2.70	4.03
Chromite	1.52	1.52
Chromium	4.45	6.25
Cobalt	4.45	6.25
Cupric oxide	3.59	6.25
Cupric sulfate	1.87	6.25
Cuprous oxide	3.97	6.25
Hydrochloric acid	.29	1.24
Hydrogen fluoride	4.23	6.25
Lead	0	6.25
Lead oxide	4.14	6.25
Mercury	4.45	6.25
Nickel	4.45	6.25
Nitric acid	.24	3.90
Phosphorus	4.45	6.25
Potassium dichromate	1.69	6.25
Potassium hydroxide	.22	6.25
Sodium dichromate	1.87	6.25
Sodium hydroxide	.28	3.72

APPENDIX A.—EXCISE TAX RATES ON FEEDSTOCK CHEMICALS UNDER PRIOR LAW AND HOUSE BILL—Continued

Substance	Prior law rate	House bill proposed fiscal year 1986 rate [1]
Stannic chloride	2.12	6.25
Stannous chloride	2.85	6 25
Sulfuric acid	.26	1.03
Zinc chloride	2.22	6.25
Zinc sulfate	1.90	6.25

[1] Proposed rates would be indexed for inflation, beginning in 1987, but would not be reduced below the rates stated in the table
[2] Coal-derived benzene, naphthalene, toluene, and xylene are exempt under current law. These substances would be taxed at the indicated rates under the bill
[3] Tax rate on xylene reflects increase to compensate for repeal of tax prior to 1986

APPENDIX B: INITIAL LIST OF TAXABLE SUBSTANCES FOR PURPOSES OF IMPORTED DERIVATIVES TAX UNDER HOUSE BILL

Cumene; Styrene; Ammonium nitrate; Nickel oxide; Isopropyl alcohol; Ethylene glycol; Vinyl chloride; Polyethylene resins, total; Polybutadiene; Styrene-butadiene, latex; Styrene-butadiene, snpf; Synthetic rubber, not containing fillers; Urea; Ferronickel; Ferrochromium nov 3 pct; Ferrochrome ov 3 pct carbon; Unwrought nickel; and Nickel waste and scrap.

Wrought nickel rods and wire; Nickel powders; Phenolic resins; Polyvinylchloride resins; Polystyrene resins and copolymers; Ethyl alcohol for nonbeverage use; Methylene chloride; Polypropylene; Propylene glycol; Formaldehyde; Acetone; Propylene oxide; Polypropylene resins; Ethylene oxide; Ethylene dichloride; Cyclohexane; Isophthalic acid; and Maleic anhydride.

Phthalic anhydride; Ethyl methyl ketone; Chloroform; Carbon tetrachloride; Chromic acid; Hydrogen peroxide; Polystyrene homopolymer resins; Melamine; Acrylic and methacrylc acid resins; Vinyl resins; and Vinyl resins, NSPF.

ESTIMATED REVENUE EFFECTS OF H.R. 2005, AS APPROVED BY THE CONFERENCE COMMITTEE, FISCAL YEARS 1987–92

[In millions of dollars]

Tax provision	1987	1988	1989	1990	1991	1992	Total
Superfund taxes.							
Petroleum tax	379	547	551	554	557	171	2,759
Chemical feedstocks tax	91	280	291	299	309	95	1,365
Environmental tax	218	418	487	528	573	298	2,522
Tax on imported chemical derivatives			13	19	19	6	57
Total, Superfund tax receipts	688	1,245	1,342	1,400	1,458	570	6,703
Leaking underground storage tank trust fund tax on gasoline, other motor fuels (0.1 cents per gal.)	89	130	132	131	18		500
Total, tax revenues to trust funds	777	1,375	1,474	1,531	1,476	570	7,203
Net increase in budget receipts (after income tax offsets)	583	1,031	1,106	1,148	1,107	428	5,403

From the Committee on Energy and Commerce for consideration of titles I–III of the House amendment to the Senate amendment, and the entire Senate amendment, except for title II:

JOHN D. DINGELL.
JAMES J. FLORIO.
DENNIS E. ECKART.
RALPH M. HALL.
BILLY TAUZIN.
AL SWIFT.

From the Committee on Energy and Commerce:

Solely for sections 102, 103, 105, 111, 113, 115, 117, 120, 121, 122, 123, 124, and 127 of title I and title III of the House amendment to the Senate amendment, and modifications committed to conference including section 157 of the Senate amendment:

RON WYDEN.

Solely for sections 101, 104, 106, 107, 108, 109, 110, 112, 114, 116, 118, 119, 125, and 126 of title I and title II of the House amendment to the Senate amendment, and modifications committed to conference:

THOMAS J. TAUKE.
NORMAN F. LENT.
DON RITTER.

From the Committee on Energy and Commerce solely for sections 101, 104, 106, 107, 108, 109, 110, 112, 114, 116, 118, 119, 125, and 126 of title I and title II of the House amendment to the Senate amendment, and modifications committed to conference:

JACK FIELDS.

From the Committee on Public Works and Transportation for consideration of titles I, II (except for section 205) and IV of the House amendment to the Senate amendment, and title I of the Senate amendment, except for sections 110, 111, 127, 157, and 160 thereof:

JAMES J. HOWARD.
GLENN M. ANDERSON.
ROBERT A. ROE.
JOHN BREAUX.
NORMAN MINETA.
BOB EDGAR.
GENE SNYDER.

From the Committee on Public Works and Transportation for consideration of titles I, II (except for section 205) and IV of the House amendment to the Senate amendment, and title I of the Senate amendment, except for sections 110, 111, 127, 157, and 160 thereof:

ARLAN STANGELAND.
NEWT GINGRICH.

From the Committee on Public Works and Transportation for consideration of title III of the House amendment to the Senate amendment, and sections 110, 111, 127, and 160 of title I of the Senate amendment:

ROBERT A. ROE.
BOB EDGAR.
ARLAN STANGELAND.

From the Committee on Ways and Means for consideration of title V of the House amendment to the Senate amendment, and title II of the Senate amendment:

DAN ROSTENKOWSKI.
J.J. PICKLE.
C.B. RANGEL.
PETE STARK.
THOMAS J. DOWNEY.
MARTY RUSSO.
DONALD J. PEASE.

From the Committee on Ways and Means for consideration of title V of the House amendment to the Senate amendment, and title II of the Senate amendment:

GUY VANDER JAGT.
BILL FRENZEL.

From the Committee on Merchant Marine and Fisheries for consideration of sections 104, 107, 108, 111, 113, 116, 121, 122, and 127 of title I of the House amendment to the Senate amendment, and modifications committed to conference:

WALTER B. JONES.
MARIO BIAGGI.
GERRY E. STUDDS.
BOB DAVIS.

From the Committee on Merchant Marine and Fisheries for consideration of title IV of the House amendment to the Senate amendment, and modifications committed to conference:

WALTER B. JONES.
MARIO BIAGGI.
GERRY E. STUDDS.
BARBARA A. MIKULSKI.
MIKE LOWRY.
BILLY TAUZIN.

From the Committee on Merchant Marine and Fisheries for consideration of title IV of the House amendment to the Senate amendment, and modifications committed to conference:

BOB DAVIS.
NORMAN F. LENT.

From the Committee on the Judiciary for consideration of sections 107, 113, 117, 119, and 122 of title I and sections 203 and 206 of title II of the House amendment to the Senate amendment, and modifications committed to conference:

PETER W. RODINO.
DAN GLICKMAN.
HAMILTON FISH, Jr.
THOMAS N. KINDNESS.

From the Committee on Armed Services for consideration of section 213 of title II of the House amendment to the Senate amendment, and section 162 of title I of the Senate amendment:

DAVE MCCURDY,
DAVID O'B. MARTIN,
Managers on the Part of the House.

From the Committee on Environment and Public Works for the purpose of considering all matter other than that contained in title II of the Senate amendments, and section 463 of title IV and title V of the House amendments:

ROBERT T. STAFFORD.
JOHN H. CHAFEE.
ALAN K. SIMPSON.
GORDON J. HUMPHREY.
PETE V. DOMENICI.
DAVID DURENBERGER.
LLOYD BENTSEN.

From the Committee on Environment and Public Works for the purpose of considering all matter other than that contained in title II of the Senate amendments, and section 463 of title IV and title V of the House amendments:

DANIEL PATRICK MOYNIHAN.
GEORGE MITCHELL.
MAX BAUCUS.
FRANK R. LAUTENBERG.

From the Committee on Finance for the purpose of considering section 463 of title IV and title V of the House amendments, and title II of the Senate amendments:

BOB PACKWOOD.
BOB DOLE.
WILLIAM V. ROTH, Jr.
RUSSELL B. LONG.
LLOYD BENTSEN.

From the Committee on the Judiciary for the purpose of joining in the consideration of sections 135, 143, 144, and to the extent it may affect the Federal courts or relate to claims against the United States, section 150, together with such amendments related directly thereto as may have been adopted by the House:

STROM THURMOND,
ARLEN SPECTER,
EDWARD M. KENNEDY,
Managers on the Part of the Senate.

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