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# USDA ENVIRONMENTAL COMPLIANCE

## Comprehensive Environmental Response, Compensation and Liability Act

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### Sec. 101 [42 USC 9601] Definitions

For purpose of this title

[101 amended by PL 99-499]

#### **CERCLA Sec. 101(1)**

(1) The term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

#### **CERCLA Sec. 101(2)**

(2) The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

#### **CERCLA Sec. 101(3)**

(3) The term "barrel" means forty-two United States gallons at sixty degrees Fahrenheit.

#### **CERCLA Sec. 101(4)**

(4) The term "claim" means a demand in writing for a sum certain.

#### **CERCLA Sec. 101(5)**

(5) The term "claimant" means any person who presents a claim for compensation under this Act.

#### **CERCLA Sec. 101(6)**

(6) The term "damages" means damages for injury or loss of natural resources as set forth in section 107(a) or 111(b) of this Act.

#### **CERCLA Sec. 101(7)**

(7) The term "drinking water supply" means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals.

#### **CERCLA Sec. 101(8)**

(8) The term "environment" means

#### **CERCLA Sec. 101(8)(A)**

(A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the

natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act of 1976, and

**CERCLA Sec. 101(8)(B)**

(B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

[101(8) amended by PL 96-561]

**CERCLA Sec. 101(9)**

(9) The term "facility" means

**CERCLA Sec. 101(9)(A)**

(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or

**CERCLA Sec. 101(9)(B)**

(B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

**CERCLA Sec. 101(10)**

(10) The term "federally permitted release" means

**CERCLA Sec. 101(10)(A)**

(A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act,

**CERCLA Sec. 101(10)(B)**

(B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit,

**CERCLA Sec. 101(10)(C)**

(C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems,

**CERCLA Sec. 101(10)(D)**

(D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act,

**CERCLA Sec. 101(10)(E)**

(E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005(a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases,

**CERCLA Sec. 101(10)(F)**

(F) any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972,

**CERCLA Sec. 101(10)(G)**

(G) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part C of the Safe Drinking Water Act,

**CERCLA Sec. 101(10)(H)**

(H) any emission into the air subject to a permit or control regulation under section 111 , section 112 , title I part C, title I part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections,

**CERCLA Sec. 101(10)(I)**

(I) any injection of fluids or other materials authorized under applicable State law

**CERCLA Sec. 101(10)(I)(i)**

(i) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water,

**CERCLA Sec. 101(10)(I)(ii)**

(ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or

**CERCLA Sec. 101(10)(I)(iii)**

(iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected,

**CERCLA Sec. 101(10)(J)**

(J) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307(b) or (c) of the Clean Water Act and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act, and

**CERCLA Sec. 101(10)(K)**

(K) any release of source, special nuclear, or byproduct material, as those terms are defined in the

Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit regulation, or order issued pursuant to the Atomic Energy Act of 1954.

**CERCLA Sec. 101(11)**

(11) The term "Fund" or "Trust Fund" means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

[101(11) revised by PL 99-499]

**CERCLA Sec. 101(12)**

(12) The term "ground water" means water in a saturated zone or stratum beneath the surface of land or water.

**CERCLA Sec. 101(13)**

(13) The term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act.

**CERCLA Sec. 101(14)**

(14) The term "hazardous substance" means

**CERCLA Sec. 101(14)(A)**

(A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act,

**CERCLA Sec. 101(14)(B)**

(B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act,

**CERCLA Sec. 101(14)(C)**

(C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress),

**CERCLA Sec. 101(14)(D)**

(D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act,

**CERCLA Sec. 101(14)(E)**

(E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and

**CERCLA Sec. 101(14)(F)**

(F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does 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 this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

**CERCLA Sec. 101(15)**

(15) The term "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas.

**CERCLA Sec. 101(16)**

(16) The term "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976), any State or local government, any foreign government, any Indian Tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian Tribe.

[101(16) amended by PL 96-561; PL 99-499]

**CERCLA Sec. 101(17)**

(17) The term "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

**CERCLA Sec. 101(18)**

(18) The term "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable **waters within the United States.**

**CERCLA Sec. 101(19)**

(19) The term "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party.

**CERCLA Sec. 101(20)**

(20) (A) The term "owner or operator" means

**CERCLA Sec. 101(20)(A)(i)**

(i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel,

**CERCLA Sec. 101(20)(A)(ii)**

(ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and

**CERCLA Sec. 101(20)(A)(i)**

(i) 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. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility.

[101(20)(A) amended by PL 99-499]

**CERCLA Sec. 101(20)(B)**

(B) In the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 107(a)(3) or (4) of this Act,

**CERCLA Sec. 101(20)(B)(i)**

(i) the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation,

**CERCLA Sec. 101(20)(B)(i)**

(i) the shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control.

[101(20)(B) amended by PL 99-499]

**CERCLA Sec. 101(20)(C)**

(C) In the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in section 107(a)(3) or (4)

**CERCLA Sec. 101(20)(C)(i)**

(i) the term "owner or operator" shall not include such common or contract carrier, and

**CERCLA Sec. 101(20)(C)(ii)**

(ii) such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control.

[101(20)(C) amended by PL 99-499]

**CERCLA Sec. 101(20)(D)**

(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 .

[101(20)(D) added by PL 99-499]

**CERCLA Sec. 101(21)**

(21) The term "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

**CERCLA Sec. 101(22)**

(22) 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 containing any hazardous substance or pollutant or contaminant), but excludes

**CERCLA Sec. 101(22)(A)**

(A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons,

**CERCLA Sec. 101(22)(B)**

(B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine,

**CERCLA Sec. 101(22)(C)**

(C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of this title or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978, and

**CERCLA Sec. 101(22)(D)**

(D) the normal application of fertilizer.

[101(22) amended by PL 99-499]

**CERCLA Sec. 101(23)**

(23) The terms "remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a

release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of this Act, and any emergency assistance which may be provided under the Disaster Relief and Emergency Assistance Act.

[101(23) amended by PL 100-707]

**CERCLA Sec. 101(24)**

(24) The terms "remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes off-site transport and off-site storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

[101(24) amended by PL 99-499]

**CERCLA Sec. 101(25)**

(25) The terms "respond" or "response" means remove, removal, remedy, and remedial action, all such terms (including the terms "removal" and "remedial action") include enforcement activities related thereto.

[101(25) amended by PL 99-499]

**CERCLA Sec. 101(26)**

(26) The terms "transport" or "transportation" means the movement of a hazardous substance by any mode, including pipeline (as defined in the Pipeline Safety Act), and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term "transport" or "transportation" shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance.

**CERCLA Sec. 101(27)**

(27) The terms "United States" and "State" include the several States of the United States, the

District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

**CERCLA Sec. 101(28)**

(28) The term "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

**CERCLA Sec. 101(29)**

(29) The terms "disposal", "hazardous waste", and "treatment" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act.

**CERCLA Sec. 101(30)**

(30) The terms "territorial sea" and "contiguous zone" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act.

**CERCLA Sec. 101(31)**

(31) The term "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act or revised pursuant to section 105 of this Act.

**CERCLA Sec. 101(32)**

(32) The term "liable" or "liability" under this title shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

**CERCLA Sec. 101(33)**

(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).

[101(33) added by PL 99-499]

**CERCLA Sec. 101(34)**

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

[101(34) added by PL 99-499]

**CERCLA Sec. 101(35)**

(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:

**CERCLA Sec. 101(35)(A)(i)**

(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.

**CERCLA Sec. 101(35)(A)(ii)**

(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.

**CERCLA Sec. 101(35)(A)(iii)**

(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).

**CERCLA Sec. 101(35)(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.

**CERCLA Sec. 101(35)(C)**

(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.

**CERCLA Sec. 101(35)(D)**

(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.

[101(35) added by PL 99-499]

**CERCLA Sec. 101(36)**

(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.

[101(36) added by PL 99-499]

**CERCLA Sec. 101(37)**

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

**CERCLA Sec. 101(37)(A)(i)**

(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

**CERCLA Sec. 101(37)(A)(ii)**

(ii) who accepts for collection, accumulation, and delivery to an oil recycling facility, recycled oil that

**CERCLA Sec. 101(37)(A)(ii)(I)**

(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

**CERCLA Sec. 101(37)(A)(ii)(II)**

(II) is presented, by such owner, to such person for collection, accumulation, and delivery to an oil recycling facility.

**CERCLA Sec. 101(37)(B)**

(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 sub-clauses (I) and (II) of subparagraph (A)(ii), and, with respect to recycled oil that satisfies the criteria set forth in sub-clauses (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.

**CERCLA Sec. 101(37)(C)**

(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.

[101(37) added by PL 99-499]

### **CERCLA Sec. 101(38)**

(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.

[101(38) added by PL 99-499]

### **Sec. 102 [42 USC 9602] Reportable Quantities and Additional Designations**

CERCLA Sec. 102(a)

(a) The Administrator shall promulgate and revise as may be appropriate. regulations designating as hazardous substances in addition to those referred to in section 101(14) of this title, such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment, and shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 103 of this title. The Administrator may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released. 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.

[102(a) amended by PL 99-499]

### **CERCLA Sec. 102(b)**

(b) Unless and until superseded by regulations establishing a reportable quantity under subsection (a) of this section for any hazardous substance as defined in section 101(14) of this title,

#### **CERCLA Sec. 102(b)(1)**

(1) a quantity of one pound, or

#### **CERCLA Sec. 102(b)(2)**

(2) for those hazardous substances for which reportable quantities have been established pursuant to section 311(b)(4) of the Federal Water Pollution Control Act, such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 103(a) or (b) of this title.

## **Sec. 103 [42 USC 9603] Notices, Penalties**

### **CERCLA Sec. 103(a)**

(a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 102 of this title, immediately notify the National Response Center established under the Clean Water Act of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

### **CERCLA Sec. 103(b)**

(b) Any person

#### **CERCLA Sec. 103(b)(1)**

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

#### **CERCLA Sec. 103(b)(2)**

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

[103(b)(2) amended by PL 96-561]

#### **CERCLA Sec. 103(b)(3)**

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that determined pursuant to section 102 of this title who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release or who submits in such a notification any information which he knows to be false or misleading shall, upon conviction, be fined 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. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

[103(b)(3) amended by PL 99-499]

### **CERCLA Sec. 103(c)**

(c) Within one hundred and eighty days after the enactment of this Act, any person who owns or operates or who at the time of disposal owned or operated, or who accepted hazardous substances for transport and selected, a facility at which hazardous substances (as defined in section 101(14)(C) of

this title) are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid Waste Disposal Act, notify the Administrator of the Environmental Protection Agency of the existence of such facility, specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may prescribe in greater detail the manner and form of the notice and the information included. The Administrator shall notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both. In addition, any such person who knowingly fails to provide the notice required by this subsection shall not be entitled to any limitation of liability or to any defenses to liability set out in section 107 of this Act: Provided, however, That notification under this subsection is not required for any facility which would be reportable hereunder solely as a result of any stoppage in transit which is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract carrier, and such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

**CERCLA Sec. 103(d)**

(d) (1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to

**CERCLA Sec. 103(d)(1)(A)**

(A) the location, title, or condition of a facility, and

**CERCLA Sec. 103(d)(1)(B)**

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility; the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

**CERCLA Sec. 103(d)(2)**

(2) Beginning with the date of enactment of this Act, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in paragraph (1) of this subsection . Any person who violates this paragraph shall, upon conviction, be fined 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.

[103(d)(2) amended by PL 99-499]

**CERCLA Sec. 103(d)(3)**

(3) At any time prior to the date which occurs fifty years after the date of enactment of this Act, any person identified under paragraph (1) of this subsection may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of paragraph (2) of this subsection. The Administrator is authorized to grant such waiver if, in his discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this Act. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

**CERCLA Sec. 103(d)(4)**

(4) Notwithstanding the provisions of this subsection, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to paragraph (1) of this subsection for such a time period in excess of the period specified in paragraph (2) of this subsection as the Administrator determines to be necessary to protect the public health or welfare.

**CERCLA Sec. 103(e)**

(e) This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or to the handling and storage of such a pesticide product by an agricultural producer.

**CERCLA Sec. 103(f)**

(f) No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance

**CERCLA Sec. 103(f)(1)**

(1) which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act, or regulations thereunder and which has been reported to the National Response Center, or

**CERCLA Sec. 103(f)(2)**

(2) which is a continuous release, stable in quantity and rate, and is

**CERCLA Sec. 103(f)(2)(A)**

(A) from a facility for which notification has been given under subsection (c) of this section, or

**CERCLA Sec. 103(f)(2)(B)**

(B) a release of which notification has been given under subsections (a) and (b) of this section for a period sufficient to establish the continuity, quantity, and regularity of such release: Provided, That notification in accordance with subsections (a) and (b) of this paragraph shall be given for releases subject to this paragraph annually, or at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring.

## **Sec. 104 [42 USC 9604] Response Authorities**

CERCLA Sec. 104(a)

(a) (1) Whenever

### **CERCLA Sec. 104(a)(1)(A)**

(A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or

### **CERCLA Sec. 104(a)(1)(B)**

(B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment. 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.

[104(a)(1) amended by PL 99-499]

### **CERCLA Sec. 104(a)(2)**

(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.

[104(a)(2) revised by PL 99-499]

### **CERCLA Sec. 104(a)(3)**

(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

### **CERCLA Sec. 104(a)(3)(A)**

(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;

**CERCLA Sec. 104(a)(3)(B)**

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

**CERCLA Sec. 104(a)(3)(C)**

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

[104(a)(3) added by PL 99-499]

**CERCLA Sec. 104(a)(4)**

(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.

[104(a)(4) added by PL 99-499]

**CERCLA Sec. 104(b)**

(b) (1) Information: Studies And Investigations. Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

[104(b)(1) designated by PL 99-499]

**CERCLA Sec. 104(b)(2)**

(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.

[104(b)(2) added by PL 99-499]

**CERCLA Sec. 104(c)**

(c) (1) Unless

**CERCLA Sec. 104(c)(1)(A)**

(A) the President finds that

**CERCLA Sec. 104(c)(1)(A)(i)**

(i) continued response actions are immediately required to prevent, limit, or mitigate an emergency,

**CERCLA Sec. 104(c)(1)(A)(ii)**

(ii) there is an immediate risk to public health or welfare or the environment, and

**CERCLA Sec. 104(c)(1)(A)(iii)**

(iii) such assistance will not otherwise be provided on a timely basis, or

**CERCLA Sec. 104(c)(1)(B)**

(B) the President has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, or

**CERCLA Sec. 104(c)(1)(C)**

(C) continued response action is otherwise appropriate and consistent with the remedial action to be taken, obligations from the Fund, other than those authorized by subsection (b) of this section, shall not continue after \$2,000,000 has been obligated for response actions or 12 months has elapsed from the date of initial response to a release or threatened release of hazardous substances.

[104(c)(1) amended by PL 99-499]

**CERCLA Sec. 104(c)(2)**

(2) The President shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

**CERCLA Sec. 104(c)(3)**

(3) 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

**CERCLA Sec. 104(c)(3)(A)**

(A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President;

**CERCLA Sec. 104(c)(3)(B)**

(B) the State will assure the availability of a hazardous waste disposal facility acceptable to the

President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary off-site storage, destruction, treatment, or secure disposition of the hazardous substances; and

**CERCLA Sec. 104(c)(3)(C)**

(C) the State will pay or assure payment of

**CERCLA Sec. 104(c)(3)(C)(i)**

(i) 10 per centum of the costs of the remedial action, including all future maintenance, or

**CERCLA Sec. 104(c)(3)(C)(ii)**

(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. The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before the date of enactment of this Act for cost-eligible response actions and claims for damages compensable under section 111 of this title relating to the specific release in question: Provided, however, That in no event shall the amount of the credit granted exceed the total response costs relating to the release. 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.

[104(c)(3) amended by PL 99-499]

**CERCLA Sec. 104(c)(4)**

(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).

[104(c)(4) revised by PL 99-499]

**CERCLA Sec. 104(c)(5)**

(5) State Credits.

**CERCLA Sec. 104(c)(5)(A)**

(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.

**CERCLA Sec. 104(c)(5)(B)**

(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

**CERCLA Sec. 104(c)(5)(B)(i)**

(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

**CERCLA Sec. 104(c)(5)(B)(ii)**

(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.

**CERCLA Sec. 104(c)(5)(C)**

(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 .

**CERCLA Sec. 104(c)(5)(D)**

(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.

**CERCLA Sec. 104(c)(5)(E)**

(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.

**CERCLA Sec. 104(c)(5)(F)**

(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.

[104(c)(5) added by PL 99-499]

### **CERCLA Sec. 104(c)(6)**

(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.

[104(c)(6) added by PL 99-499]

### **CERCLA Sec. 104(c)(7)**

(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.

[104(c)(7) added by PL 99-499]

### **CERCLA Sec. 104(c)(8)**

(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.

[104(c)(8) added by PL 99-499]

### **CERCLA Sec. 104(c)(9)**

(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

#### **CERCLA Sec. 104(c)(9)(A)**

(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,

**CERCLA Sec. 104(c)(9)(B)**

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

**CERCLA Sec. 104(c)(9)(C)**

(C) are acceptable to the President, and

**CERCLA Sec. 104(c)(9)(D)**

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

[104(c)(9) added by PL 99-499]

**CERCLA Sec. 104(d)**

(d) (1) Cooperative Agreements.

**CERCLA Sec. 104(d)(1)(A)**

(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.

**CERCLA Sec. 104(d)(1)(B)**

(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.

**CERCLA Sec. 104(d)(1)(C)**

(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.

[104(d)(1) revised by PL 99-499]

**CERCLA Sec. 104(d)(2)**

(2) If the President enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the President may, after providing sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any

funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

**CERCLA Sec. 104(d)(3)**

(3) Where a State or a political subdivision thereof is acting in behalf of the President, the President is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this title, and to intervene in any civil action involving the enforcement of such contract or subcontract.

**CERCLA Sec. 104(d)(4)**

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the President may, in his discretion, treat these related facilities as one for purposes of this section.

**CERCLA Sec. 104(e)**

(e) Information Gathering And Access.

**CERCLA Sec. 104(e)(1)**

(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.

[104(e)(1) revised by PL 99-499]

**CERCLA Sec. 104(e)(2)**

(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:

**CERCLA Sec. 104(e)(2)(A)**

(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.

**CERCLA Sec. 104(e)(2)(B)**

(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.

**CERCLA Sec. 104(e)(2)(C)**

(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

**CERCLA Sec. 104(e)(2)(C)(i)**

(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

**CERCLA Sec. 104(e)(2)(C)(ii)**

(ii) shall copy and furnish to the officer, employee, or representative all such documents or records, at the option and expense of such person.

[104(e)(2) added by PL 99-499]

**CERCLA Sec. 104(e)(3)**

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

[104(e)(3) added by PL 99-499]

**CERCLA Sec. 104(e)(3)(A)**

(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.

**CERCLA Sec. 104(e)(3)(B)**

(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.

**CERCLA Sec. 104(e)(3)(C)**

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

**CERCLA Sec. 104(e)(3)(D)**

(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.

**CERCLA Sec. 104(e)(4)**

(4) Inspection And Samples.

**CERCLA Sec. 104(e)(4)(A)**

(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.

**CERCLA Sec. 104(e)(4)(B)**

(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.

[104(e)(4) added by PL 99-499]

**CERCLA Sec. 104(e)(5)**

(5) Compliance Orders.

**CERCLA Sec. 104(e)(5)(A)**

(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.

**CERCLA Sec. 104(e)(5)(B)**

(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:

**CERCLA Sec. 104(e)(5)(B)(i)**

(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.

**CERCLA Sec. 104(e)(5)(B)(ii)**

(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.

[104(e)(5) added by PL 99-499]

**CERCLA Sec. 104(e)(6)**

(6) Other Authority. Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.

[104(e)(6) added by PL 99-499]

**CERCLA Sec. 104(e)(7)**

(7) Confidentiality Of Information.

**CERCLA Sec. 104(e)(7)(A)**

(A) Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the President) shall be available to the public, except that upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) 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 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

**CERCLA Sec. 104(e)(7)(B)**

(B) Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

**CERCLA Sec. 104(e)(7)(C)**

(C) In submitting data under this Act, a person required to provide such data may

**CERCLA Sec. 104(e)(7)(C)(i)**

(i) designate the data which such person believes is entitled to protection under this subsection and

**CERCLA Sec. 104(e)(7)(C)(ii)**

(ii) submit such designated data separately from other data submitted under this Act. A designation under this paragraph shall be made in writing and in such manner as the President may prescribe by regulation.

**CERCLA Sec. 104(e)(7)(D)**

(D) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the President (or any representative of the President) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

**CERCLA Sec. 104(e)(7)(E)**

(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:

**CERCLA Sec. 104(e)(7)(E)(i)**

(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.

**CERCLA Sec. 104(e)(7)(E)(ii)**

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

**CERCLA Sec. 104(e)(7)(E)(iii)**

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

**CERCLA Sec. 104(e)(7)(E)(iv)**

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

**CERCLA Sec. 104(e)(7)(F)**

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

**CERCLA Sec. 104(e)(7)(F)(i)**

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

**CERCLA Sec. 104(e)(7)(F)(ii)**

(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.

**CERCLA Sec. 104(e)(7)(F)(iii)**

(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.

**CERCLA Sec. 104(e)(7)(F)(iv)**

(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.

**CERCLA Sec. 104(e)(7)(F)(v)**

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

**CERCLA Sec. 104(e)(7)(F)(vi)**

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

**CERCLA Sec. 104(e)(7)(F)(vii)**

(vii) Any hydrogeologic or geologic data.

**CERCLA Sec. 104(e)(7)(F)(viii)**

(viii) Any groundwater monitoring data.

[Former 104(e)(2) amended and redesignated as (7) by PL 99-499]

**CERCLA Sec. 104(f)**

(f) In awarding contracts to any person engaged in response actions, the President or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and safety standards established under section 301(f) of this Act by contractors and subcontractors as a condition of such contracts.

**CERCLA Sec. 104(g)**

(g) (1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The President shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

**CERCLA Sec. 104(g)(2)**

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176: 64 Stat. 1267) and section 276c of title 40 of the United States Code.

**CERCLA Sec. 104(h)**

(h) Notwithstanding any other provision of law, subject to the provisions of section 111 of this Act, the President may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this Act. Upon determination that such procedures are necessary, the President shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

### **CERCLA Sec. 104(i)**

(i) (1) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control and Prevention, the Administrator of the Occupational Safety and Health Administration, the Administrator of the Social Security Administration, the Secretary of Transportation, and appropriate State and local health officials, effectuate and implement the health related authorities of this Act. In addition, said Administrator shall

[104(i)(1) amended by PL PL 102-531]

### **CERCLA Sec. 104(i)(1)(A)**

(A) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;

### **CERCLA Sec. 104(i)(1)(B)**

(B) establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

### **CERCLA Sec. 104(i)(1)(C)**

(C) in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

### **CERCLA Sec. 104(i)(1)(D)**

(D) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing where appropriate, epidemiological studies, or any other assistance appropriate under the circumstances; and

### **CERCLA Sec. 104(i)(1)(E)**

(E) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.

[New 104(i)(1) designated and former (1)-(5) redesignated as (A)-(E) by PL 99-499]

### **CERCLA Sec. 104(i)(2)**

(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.

**CERCLA Sec. 104(i)(2)(B)**

(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).

[104(i)(2) added by PL 99-499]

**CERCLA Sec. 104(i)(3)**

(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:

**CERCLA Sec. 104(i)(3)(A)**

(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.

**CERCLA Sec. 104(i)(3)(B)**

(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.

**CERCLA Sec. 104(i)(3)(C)**

(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.

[104(i)(3) added by PL 99-499]

**CERCLA Sec. 104(i)(4)**

(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.

[104(i)(4) added by PL 99-499]

**CERCLA Sec. 104(i)(5)**

(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

**CERCLA Sec. 104(i)(5)(A)(i)**

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

**CERCLA Sec. 104(i)(5)(A)(ii)**

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

**CERCLA Sec. 104(i)(5)(A)(iii)**

(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

**CERCLA Sec. 104(i)(5)(A)(iv)**

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

**CERCLA Sec. 104(i)(5)(B)**

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

**CERCLA Sec. 104(i)(5)(B)(i)**

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

**CERCLA Sec. 104(i)(5)(B)(ii)**

(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

**CERCLA Sec. 104(i)(5)(B)(iii)**

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

**CERCLA Sec. 104(i)(5)(C)**

(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.

**CERCLA Sec. 104(i)(5)(D)**

(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.

[104(i)(5) added by PL 99-499]

**CERCLA Sec. 104(i)(6)**

(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.

**CERCLA Sec. 104(i)(6)(B)**

(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.

**CERCLA Sec. 104(i)(6)(C)**

(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.

**CERCLA Sec. 104(i)(6)(D)**

(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.

**CERCLA Sec. 104(i)(6)(E)**

(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.

**CERCLA Sec. 104(i)(6)(F)**

(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.

**CERCLA Sec. 104(i)(6)(G)**

(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 non-point sources other than those from the facility in question.

**CERCLA Sec. 104(i)(6)(H)**

(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.

[104(i)(6) added by PL 99-499]

**CERCLA Sec. 104(i)(7)**

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

**CERCLA Sec. 104(i)(7)(B)**

(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.

[104(i)(7) added by PL 99-499]

**CERCLA Sec. 104(i)(8)**

(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.

[104(i)(8) added by PL 99-499]

**CERCLA Sec. 104(i)(9)**

(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

**CERCLA Sec. 104(i)(9)(A)**

(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

**CERCLA Sec. 104(i)(9)(B)**

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

[104(i)(9) added by PL 99-499]

**CERCLA Sec. 104(i)(10)**

(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

**CERCLA Sec. 104(i)(10)(A)**

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

**CERCLA Sec. 104(i)(10)(B)**

(B) epidemiologic studies conducted;

**CERCLA Sec. 104(i)(10)(C)**

(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;

CERCLA Sec. 104(i)(10)(D)

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

CERCLA Sec. 104(i)(10)(E)

(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 hazardous 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.

[104(i)(10) added by PL 99-499]

CERCLA Sec. 104(i)(11)

(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

CERCLA Sec. 104(i)(11)(A)

(A) provision of alternative water supplies, and

CERCLA Sec. 104(i)(11)(B)

(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.

[104(i)(11) added by PL 99-499]

CERCLA Sec. 104(i)(12)

(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.

[104(i)(12) added by PL 99-499]

CERCLA Sec. 104(i)(13)

(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.

[104(i)(13) added by PL 99-499]

**CERCLA Sec. 104(i)(14)**

(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.

[104(i)(14) added by PL 99-499]

**CERCLA Sec. 104(i)(15)**

(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.

[104(i)(15) added by PL 99-499]

**CERCLA Sec. 104(i)(16)**

(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.

[104(i)(16) added by PL 99-499]

**CERCLA Sec. 104(i)(17)**

(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 non- governmental entity.

[104(i)(17) added by PL 99-499]

**CERCLA Sec. 104(i)(18)**

(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.

[104(i)(18) added by PL 99-499]

**CERCLA Sec. 104(j)**

(j) Acquisition of Property.

**CERCLA Sec. 104(j)(1)**

(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.

**CERCLA Sec. 104(j)(2)**

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

**CERCLA Sec. 104(j)(3)**

(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.

[104(j) added by PL 99-499]

**Sec. 105 [42 USC 9605] National Contingency Plan**

**CERCLA Sec. 105(a)**

(a) Revision And Republication. Within one hundred and eighty days after the enactment of this Act, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Federal Water Pollution Control Act, to reflect and effectuate the responsibilities and powers created by this Act, in addition to those matters specified in section 311(c)(2). Such revision shall include a section of the plan to be known as the national

hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

**CERCLA Sec. 105(a)(1)**

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

**CERCLA Sec. 105(a)(2)**

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

**CERCLA Sec. 105(a)(3)**

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this Act;

**CERCLA Sec. 105(a)(4)**

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

**CERCLA Sec. 105(a)(5)**

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

**CERCLA Sec. 105(a)(6)**

(6) a method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;

**CERCLA Sec. 105(a)(7)**

(7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;

**CERCLA Sec. 105(a)(8)**

(8) (A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive 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, State preparedness to assume State costs and responsibilities, and other appropriate factors;

[105(a)(8)(A) amended by PL 99-499]

**CERCLA Sec. 105(a)(8)(B)**

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall consider any priorities established by the States. To the extent practicable, the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets", and, to the extent practicable, shall include among the one hundred highest priority facilities one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. A State shall be allowed to designate its highest priority facility only once. Other priority facilities or incidents may be listed singly or grouped for response priority purposes;

[105(a)(8)(B) amended by PL 99-499]

**CERCLA Sec. 105(a)(9)**

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor and including consideration of minority firms in accordance with subsection (f); and

[105(a)(9) amended by PL 99-499]

**CERCLA Sec. 105(a)(10)**

(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.

[105(a)(10) added by PL 99-499]

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 311(c)(2)(F) and (G) and (j)(1) of the Federal Water Pollution Control Act. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible be in accordance with the provisions of the plan, The President may, from time to time, revise and republish the national contingency plan.

**CERCLA Sec. 105(b)**

(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.

[105(b) added by PL 99-499]

**CERCLA Sec. 105(c)**

(c) Hazard Ranking System.

**CERCLA Sec. 105(c)(1)**

(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 amendments 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.

**CERCLA Sec. 105(c)(2)**

(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 potential migration of any hazardous substance or pollutant or contaminant through such surface water to downstream sources of drinking water.

**CERCLA Sec. 105(c)(3)**

(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.

**CERCLA Sec. 105(c)(4)**

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

[105(c) added by PL 99-499]

**CERCLA Sec. 105(d)**

(d) Petition For Assessment Of Release. Any person who is, or may be, affected by 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.

[105(d) added by PL 99-499]

**CERCLA Sec. 105(e)**

(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.

[105(e) added by PL 99-499]

**CERCLA Sec. 105(f)**

(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.

[105(f) added by PL 99-499]

**CERCLA Sec. 105(g)**

(g) Special Study Wastes.

**CERCLA Sec. 105(g)(1)**

(1) Application. This subsection applies to facilities

**CERCLA Sec. 105(g)(1)(A)**

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

**CERCLA Sec. 105(g)(1)(B)**

(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.

### **CERCLA Sec. 105(g)(2)**

(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:

#### **CERCLA Sec. 105(g)(2)(A)**

(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.

#### **CERCLA Sec. 105(g)(2)(B)**

(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.

#### **CERCLA Sec. 105(g)(3)**

(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.

#### **CERCLA Sec. 105(g)(4)**

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

[105(g) added by PL 99-499]

### **Sec. 106 [42 USC 9606] Abatement Action**

#### **CERCLA Sec. 106(a)**

(a) In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

#### **CERCLA Sec. 106(b)**

(b) (1) Any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

[106(b)(1) designated and amended by PL 99-499]

**CERCLA Sec. 106(b)(2)**

(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.

**CERCLA Sec. 106(b)(2)(B)**

(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.

**CERCLA Sec. 106(b)(2)(C)**

(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.

**CERCLA Sec. 106(b)(2)(D)**

(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.

**CERCLA Sec. 106(b)(2)(E)**

(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.

[106(b)(2) added by PL 99-499]

**CERCLA Sec. 106(c)**

(c) Within one hundred and eighty days after enactment of this Act, this Act, the Administrator of the Environmental Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities

of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this Act. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforcement of standards and permits, the gathering of information, and other imminent hazard and emergency powers authorized by (1) sections 311(c)(2), 308, 309 , and 504(a) of the Federal Water Pollution Control Act, (2) sections 3007 , 3008 , 3013 , and 7003 of the Solid Waste Disposal Act, (3) sections 1445 and 1431 of the Safe Drinking Water Act, (4) sections 113 , 114 , and 303 of the Clean Air Act, and (5) section 7 of the Toxic Substances Control Act.

### **Sec. 107 [42 USC 9607] Liability**

CERCLA Sec. 107(a)

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section

#### **CERCLA Sec. 107(a)(1)**

(1) the owner and operator of a vessel or a facility,

[107(a)(1) amended by PL 99-499]

#### **CERCLA Sec. 107(a)(2)**

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

#### **CERCLA Sec. 107(a)(3)**

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and

[107(a)(3) amended by PL 99-499]

#### **CERCLA Sec. 107(a)(4)**

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for

##### **CERCLA Sec. 107(a)(4)(A)**

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

##### **CERCLA Sec. 107(a)(4)(B)**

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;

**CERCLA Sec. 107(a)(4)(C)**

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

**CERCLA Sec. 107(a)(4)(D)**

(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

**CERCLA Sec. 107(a)(4)(D)(i)**

(i) the date payment of a specified amount is demanded in writing, or

**CERCLA Sec. 107(a)(4)(D)(ii)**

(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.

[107(a)(4), (A)(C) amended and (D) added by PL 99-499]

**CERCLA Sec. 107(b)**

(b) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by

**CERCLA Sec. 107(b)(1)**

(1) an act of God;

**CERCLA Sec. 107(b)(2)**

(2) an act of war;

**CERCLA Sec. 107(b)(3)**

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all

relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

**CERCLA Sec. 107(b)(4)**

(4) any combination of the foregoing paragraphs.

**CERCLA Sec. 107(c)**

(c) (1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed

**CERCLA Sec. 107(c)(1)(A)**

(A) for any vessel, other than an incineration vessel, which carries any hazardous substance as cargo or residue, \$300 per gross ton, or \$5,000,000, whichever is greater:

[107(c)(1)(A) amended by PL 99-499]

**CERCLA Sec. 107(c)(1)(B)**

(B) for any other vessel, other than an incineration vessel, \$300 per gross ton, or \$500,000, whichever is greater;

[107(c)(1)(B) amended by PL 99-499]

**CERCLA Sec. 107(c)(1)(C)**

(C) for any motor vehicle, aircraft, pipeline (as defined in the Hazardous Liquid Pipeline Safety Act of 1979) or rolling stock, \$50,000,000 or such lesser amount as the President shall establish by regulation, but in no event less than \$5,000,000 (or, for releases of hazardous substances as defined in section 101(14)(A) of this title into the navigable waters, \$8,000,000). Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic

impact of such limits on each such class; or

**CERCLA Sec. 107(c)(1)(D)**

(D) for any incineration vessel or any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus \$50,000,000 for any damages under this title.

[107(c)(1)(D) amended by PL 99-499]

**CERCLA Sec. 107(c)(2)**

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if

**CERCLA Sec. 107(c)(2)(A)**

(A) (i) the release or threat of release of a hazardous substance was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or

**CERCLA Sec. 107(c)(2)(A)(ii)**

(ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or

**CERCLA Sec. 107(c)(2)(B)**

(B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 of the United States Code or vessels subject to the provisions of title 33 or 46 of the United States Code, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

**CERCLA Sec. 107(c)(3)**

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 104 or 106 of this Act, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 112(c) of this Act. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

**CERCLA Sec. 107(d)**

(d) Rendering Care Or Advice.

**CERCLA Sec. 107(d)(1)**

(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 on-scene 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.

**CERCLA Sec. 107(d)(2)**

(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.

**CERCLA Sec. 107(d)(3)**

(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.

[107(d) revised by PL 99-499]

**CERCLA Sec. 107(e)**

(e) (1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. 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.

**CERCLA Sec. 107(e)(2)**

(2) Nothing in this title, including the provisions of paragraph (1) of this subsection, 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.

**CERCLA Sec. 107(f)**

(f) (1) Natural Resources Liability. In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State 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. Provided, however, That no liability to the United States or State or Indian tribe shall be imposed under subparagraph (C) of subsection (a), where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license, 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. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages.

The following is the text of the third sentence of 107(f)(1) as amended by Section 107(d)(2) of PL 99-499:

Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriations, 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 sub paragraph (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.

Following is the text of the third sentence of 107(f)(1) as amended by Section 207(c)(2)(D) of PL 99-499 :

Sums recovered shall be available for use to restore, rehabilitate or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government or the Indian tribe, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources.]

There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages and the release of a hazardous substance damage from which such resulted have occurred wholly before the enactment of this Act.

[107(f)(1) amended by PL 99-499]

**CERCLA Sec. 107(f)(2)**

(2) Designation Of Federal And State Officials.

**CERCLA Sec. 107(f)(2)(A)**

(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.

**CERCLA Sec. 107(f)(2)(B)**

(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.

**CERCLA Sec. 107(f)(2)(C)**

(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.

[107(f)(2) added by PL 99-499]

### **CERCLA Sec. 107(g)**

(g) Federal Agencies. For provisions relating to Federal agencies, see section 120 of this Act.

[107(g) revised by PL 99-499]

### **CERCLA Sec. 107(h)**

(h) The owner or operator of a vessel shall be liable in accordance with this section, under maritime tort law, and as provided under section 114 of this Act notwithstanding any provision of the Act of March 3, 1851 (46 USC 183ff ) or the absence of any physical damage to the proprietary interest of the claimant.

[107(h) amended by PL 99-499]

### **CERCLA Sec. 107(i)**

(i) No person (including the United States or any State or Indian tribe may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. 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 of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

[107(i) amended by PL 99-499]

### **CERCLA Sec. 107(j)**

(j) Recovery by any person (including the United States or any State or Indian tribe) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. 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 of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 101(10)(B) or (C) shall be recoverable in an action brought under section 309(b) of the Clean Water Act.

### **CERCLA Sec. 107(k)**

(k) (1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act, shall be transferred to and assumed by the Post-closure Liability Fund established by section 232 of this Act when

#### **CERCLA Sec. 107(k)(1)(A)**

(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act and regulations issued thereunder, which may affect the performance of such facility after closure; and

### **CERCLA Sec. 107(k)(1)(B)**

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration off-site or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

### **CERCLA Sec. 107(k)(2)**

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 232 of this Act, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

### **CERCLA Sec. 107(k)(3)**

(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 232 of this Act may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

### **CERCLA Sec. 107(k)(4)**

(4) (A) Not later than one year after the date of enactment of this Act, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for post-closure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in title II of this Act.

### **CERCLA Sec. 107(k)(4)(B)**

(B) Not later than eighteen months after the date of enactment of this Act and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional

system of private insurance for post-closure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this Act and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

**CERCLA Sec. 107(k)(4)(C)**

(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under title II of this Act.

**CERCLA Sec. 107(k)(4)(D)**

(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

**CERCLA Sec. 107(k)(5)**

(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.

[107(k)(5) added by PL 99-499]

**CERCLA Sec. 107(k)(6)**

(6) Study of Options For Post-Closure Program.

**CERCLA Sec. 107(k)(6)(A)**

(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.

**CERCLA Sec. 107(k)(6)(B)**

(B) Program elements. The program referred to in subparagraph (A) shall be designed to assure each of the following:

**CERCLA Sec. 107(k)(6)(B)(i)**

(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.

**CERCLA Sec. 107(k)(6)(B)(ii)**

(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.

**CERCLA Sec. 107(k)(6)(B)(iii)**

(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.

**CERCLA Sec. 107(k)(6)(C)**

(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

**CERCLA Sec. 107(k)(6)(C)(i)**

(i) the current and future financial capabilities of facility owners and operators;

**CERCLA Sec. 107(k)(6)(C)(ii)**

(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

**CERCLA Sec. 107(k)(6)(C)(iii)**

(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.

**CERCLA Sec. 107(k)(6)(D)**

(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.

**CERCLA Sec. 107(k)(6)(E)**

(E) Consideration of options. In conducting the study under this paragraph, the Comptroller General shall consider various mechanisms and combinations of mechanisms 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

**CERCLA Sec. 107(k)(6)(E)(i)**

(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act;

**CERCLA Sec. 107(k)(6)(E)(ii)**

(ii) voluntary risk pooling by owners and operators;

**CERCLA Sec. 107(k)(6)(E)(iii)**

(iii) legislation to require risk pooling by owners and operators;

**CERCLA Sec. 107(k)(6)(E)(iv)**

(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;

**CERCLA Sec. 107(k)(6)(E)(v)**

(v) private insurance;

**CERCLA Sec. 107(k)(6)(E)(vi)**

(vi) insurance provided by the Federal Government;

**CERCLA Sec. 107(k)(6)(E)(vii)**

(vii) coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government; and

**CERCLA Sec. 107(k)(6)(E)(viii)**

(viii) creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

**CERCLA Sec. 107(k)(6)(F)**

(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.

[107(k)(6) added by PL 99-499]

**CERCLA Sec. 107(l)**

(l) Federal Lien.

**CERCLA Sec. 107(l)(1)**

(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

**CERCLA Sec. 107(l)(1)(A)**

(A) belong to such person; and

**CERCLA Sec. 107(l)(1)(B)**

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

**CERCLA Sec. 107(l)(2)**

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

**CERCLA Sec. 107(l)(2)(A)**

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

**CERCLA Sec. 107(l)(2)(B)**

(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 .

**CERCLA Sec. 107(l)(3)**

(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.

**CERCLA Sec. 107(l)(4)**

(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.

[107(1) added by PL 99-499]

#### **CERCLA Sec. 107(m)**

(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.

[107(m) added by PL 99-499]

#### **Sec. 108 [42 USC 9608] Financial Responsibility**

CERCLA Sec. 108(a)

(a) (1) The owner or operator of each vessel (except a non-self-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of \$300 per gross ton (or for a vessel carrying hazardous substances as cargo, or \$5,000,000, whichever is greater to cover the liability prescribed under paragraph (1) of section 107(a) of this Act. Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond issued shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the larger of such vessels.

#### **CERCLA Sec. 108(a)(2)**

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

#### **CERCLA Sec. 108(a)(3)**

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

#### **CERCLA Sec. 108(a)(4)**

(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.

[108(a)(4) added by PL 99-499]

**CERCLA Sec. 108(b)**

(b) (1) Beginning not earlier than five years after the date of enactment of this Act, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after the date of enactment of the Act, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

**CERCLA Sec. 108(b)(2)**

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements. 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.

[108(b)(2) amended by PL 99-499]

**CERCLA Sec. 108(b)(3)**

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements as quickly as can reasonably be achieved but in no event more than 4 years after the date of promulgation. Where possible, the level of financial responsibility which the President believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

[108(b)(3) amended by PL 99-499]

**CERCLA Sec. 108(b)(4)**

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When

evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

**CERCLA Sec. 108(b)(5)**

(5) The requirements for evidence of financial responsibility for motor carriers covered by this Act shall be determined under section 30 of the Motor Carrier Act of 1980, Public Law 96-296.

**CERCLA Sec. 108(c)**

(c) Direct Action.

**CERCLA Sec. 108(c)(1)**

(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.

**CERCLA Sec. 108(c)(2)**

(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.

[108(c) revised by PL 99-499]

**CERCLA Sec. 108(d)**

(d) Limitations of Guarantor Liability.

**CERCLA Sec. 108(d)(1)**

(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.

## **CERCLA Sec. 108(d)(2)**

(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.

[108(d) revised by PL 99-499]

## **Sec. 109 [42 USC 9609] Civil Penalties and Awards.**

[109 revised by PL 99-499]

### **CERCLA Sec. 109(a)**

(a) Class I Administrative Penalty.

#### **CERCLA Sec. 109(a)(1)**

(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

##### **CERCLA Sec. 109(a)(1)(A)**

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

##### **CERCLA Sec. 109(a)(1)(B)**

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

##### **CERCLA Sec. 109(a)(1)(C)**

(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 .

##### **CERCLA Sec. 109(a)(1)(D)**

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

##### **CERCLA Sec. 109(a)(1)(E)**

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

#### **CERCLA Sec. 109(a)(2)**

(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.

#### **CERCLA Sec. 109(a)(3)**

(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.

**CERCLA Sec. 109(a)(4)**

(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.

**CERCLA Sec. 109(a)(5)**

(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.

**CERCLA Sec. 109(b)**

(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

**CERCLA Sec. 109(b)(1)**

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

**CERCLA Sec. 109(b)(2)**

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

**CERCLA Sec. 109(b)(3)**

(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 .

**CERCLA Sec. 109(b)(4)**

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

**CERCLA Sec. 109(b)(5)**

(5) Any failure or refusal referred to in section 122(1) (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.

**CERCLA Sec. 109(c)**

(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

**CERCLA Sec. 109(c)(1)**

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

**CERCLA Sec. 109(c)(2)**

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

**CERCLA Sec. 109(c)(3)**

(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 .

**CERCLA Sec. 109(c)(4)**

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

**CERCLA Sec. 109(c)(5)**

(5) Any failure or refusal referred to in section 122(1) (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).

#### **CERCLA Sec. 109(d)**

(d) Awards. The President may pay 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 .

#### **CERCLA Sec. 109(e)**

(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.

#### **CERCLA Sec. 109(f)**

(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 [42 USC 9610] Employee Protection**

##### **CERCLA Sec. 110(a)**

(a) No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

##### **CERCLA Sec. 110(b)**

(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the

hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this Act.

#### **CERCLA Sec. 110(c)**

(c) Whenever an order is issued under this section to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

#### **CERCLA Sec. 110(d)**

(d) This section shall have no application to any employee who acting without discretion from his employer (or his agent) deliberately violates any requirement of this Act.

#### **CERCLA Sec. 110(e)**

(e) The President shall conduct continuing evaluations of potential loss of shifts of employment which may result from the administration or enforcement of the provisions of this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the President to conduct a full investigation of the matter and, at the request of any party, shall hold public hearings, require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination, and the detailed reasons or justification therefore. Any such hearing shall be of record and shall be subject to section 554 of title 5, United States Code. Upon receiving the report of such investigation, the President shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the President or any State to modify or withdraw any action, standard, limitation, or any other requirement of this Act.

#### **Sec. 111 [42 USC 9611] Uses of Fund**

##### **CERCLA Sec. 111(a)**

(a) 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 not more than \$5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994, 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). The President shall use the money in the Fund for the following purposes:

[111(a) revised by PL 99-499; amended by PL 101-508]

**CERCLA Sec. 111(a)(1)**

(1) Payment of governmental response costs incurred pursuant to section 104 of this title, including costs incurred pursuant to the Intervention on the High Seas Act.

**CERCLA Sec. 111(a)(2)**

(2) Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: Provided, however, That such costs must be approved under said plan and certified by the responsible Federal official.

**CERCLA Sec. 111(a)(3)**

(3) Payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 112 of this title, including those costs set out in subsection 112(c)(3) of this title.

**CERCLA Sec. 111(a)(4)**

(4) Payment of costs specified under subsection (c) of this section.

**CERCLA Sec. 111(a)(5)**

(5) Grants for technical assistance. The cost of grants under section 117(e) (relating to public participation grants for technical assistance).

[111(a)(5) added by PL 99-499]

**CERCLA Sec. 111(a)(6)**

(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.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this title.

[111(a)(6) added by PL 99-499]

**CERCLA Sec. 111(b)**

(b) (1) In General. Claims asserted and compensable but unsatisfied under provisions of section 311

of the Clean Water Act, which are modified by section 304 of this Act may be asserted against the Fund under this title; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this title for injury to, or destruction or loss of, natural resources, including cost for damage assessment: Provided, however, That any such claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State, 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.

[111(b)(1) amended by PL 99-499]

**CERCLA Sec. 111(b)(2)**

(2) Limitation on payment of natural resource claims.

**CERCLA Sec. 111(b)(2)(A)**

(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 .

**CERCLA Sec. 111(b)(2)(B)**

(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.

[111(b)(2) added by PL 99-499]

**CERCLA Sec. 111(c)**

(c) Uses of the Fund under subsection (a) of this section include

**CERCLA Sec. 111(c)(1)**

(1) The costs of assessing both short- term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance.

[111(c)(1) amended by PL 99-499]

**CERCLA Sec. 111(c)(2)**

(2) The costs of Federal or State or Indian tribe efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance.

[111(c)(2) amended by PL 99-499]

**CERCLA Sec. 111(c)(3)**

(3) Subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances.

[111(c)(3) amended by PL 99-499]

**CERCLA Sec. 111(c)(4)**

(4) 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, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long- latency diseases.

[111(c)(4) amended by PL 99-499]

**CERCLA Sec. 111(c)(5)**

(5) Subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead related to the purposes of this Act and section 311 of the Clean Water Act, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan.

[111(c)(5) amended by PL 99-499]

**CERCLA Sec. 111(c)(6)**

(6) Subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees.

[111(c)(6) amended by PL 99-499]

**CERCLA Sec. 111(c)(7)**

(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).

[111(c)(7) added by PL 99-499]

**CERCLA Sec. 111(c)(8)**

(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.

[111(c)(8) added by PL 99-499]

**CERCLA Sec. 111(c)(9)**

(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).

[111(c)(9) added by PL 99-499]

**CERCLA Sec. 111(c)(10)**

(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.

[111(c)(10) added by PL 99-499]

**CERCLA Sec. 111(c)(11)**

(11) Local government reimbursement. Reimbursements to local governments under section 123 , except that during the 8-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.

[111(c)(11) added by PL 99-499; amended by PL 101-508]

**CERCLA Sec. 111(c)(12)**

(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 \$20,000,000 for each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994.

[111(c)(12) added by PL 99-499; amended by PL 101-144; PL 101-508]

**CERCLA Sec. 111(c)(13)**

(13) Awards under section 109 . The costs of any awards granted under section 109(d).

**CERCLA Sec. 111(c)(14)**

(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).

**CERCLA Sec. 111(d)**

(d) (1) No money in the Fund may be used under subsection (c)(1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury, destruction, or loss of

natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

**CERCLA Sec. 111(d)(2)**

(2) No money in the Fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

**CERCLA Sec. 111(e)**

(e) (1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

**CERCLA Sec. 111(e)(2)**

(2) In any fiscal year, 85 percent of the money credited to the Fund under title II of this Act shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section. 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.

[111(e)(2) amended by PL 99-499]

**CERCLA Sec. 111(e)(3)**

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities; 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.

[111(e)(3) amended by PL 99-499]

**CERCLA Sec. 111(e)(4)**

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

**CERCLA Sec. 111(f)**

(f) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State or Indian tribe operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d) of this title.

[111(f) amended by PL 99-499]

**CERCLA Sec. 111(g)**

(g) The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this title. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

**CERCLA Sec. 111(h)**

(h) [Repealed]

[111(h) repealed by PL 99-499]

**CERCLA Sec. 111(i)**

(i) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State 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, having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State 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, after adequate public notice and opportunity for hearing and consideration of all public comment.

[111(i) amended by PL 99-499]

**CERCLA Sec. 111(j)**

(j) The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 107(k) of this Act, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 107 of this Act or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.

**CERCLA Sec. 111(k)**

(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.

[111(k) revised by PL 99-499]

**CERCLA Sec. 111(l)**

(l) To the extent that the provisions of this Act permit, a foreign claimant may assert a claim to the same extent that a United States claimant may assert a claim if

**CERCLA Sec. 111(l)(1)**

(1) the release of a hazardous substance occurred (A) in the navigable waters or (B) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

**CERCLA Sec. 111(l)(2)**

(2) the claimant is not otherwise compensated for his loss;

**CERCLA Sec. 111(l)(3)**

(3) the hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

**CERCLA Sec. 111(l)(4)**

(4) recovery is authorized by a treaty or an executive agreement between the United States and foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

**CERCLA Sec. 111(m)**

(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, 1991, 1992, 1993, and 1994. 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.

[111(m) added by PL 99-499; amended by PL 101-508]

**CERCLA Sec. 111(n)**

(n) Limitations on Research, Development, and Demonstration Program.

**CERCLA Sec. 111(n)(1)**

(1) Section 311(b). For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, 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.

**CERCLA Sec. 111(n)(2)**

(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):

**CERCLA Sec. 111(n)(2)(A)**

(A) For the fiscal year 1987, \$3,000,000.

**CERCLA Sec. 111(n)(2)(B)**

(B) For the fiscal year 1988, \$10,000,000.

**CERCLA Sec. 111(n)(2)(C)**

(C) For the fiscal year 1989, \$20,000,000.

**CERCLA Sec. 111(n)(2)(D)**

(D) For the fiscal year 1990, \$30,000,000.

**CERCLA Sec. 111(n)(2)(E)**

(E) For each of the fiscal years 1991, 1992, 1993, and 1994, \$35,000,000.

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

**CERCLA Sec. 111(n)(3)**

(3) Section 311(d). For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, 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).

[111(n) added by PL 99-499; amended by PL 101-508]

**CERCLA Sec. 111(o)**

(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.

[111(o) added by PL 99-499]

**CERCLA Sec. 111(p)**

(p) General Revenue Share of Superfund.

**CERCLA Sec. 111(p)(1)**

(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:

**CERCLA Sec. 111(p)(1)(A)**

(A) For fiscal year 1987, \$212,500,000.

**CERCLA Sec. 111(p)(1)(B)**

(B) For fiscal year 1988, \$212,500,000.

**CERCLA Sec. 111(p)(1)(C)**

(C) For fiscal year 1989, \$212,500,000.

**CERCLA Sec. 111(p)(1)(D)**

(D) For fiscal year 1990, \$212,500,000.

**CERCLA Sec. 111(p)(1)(E)**

(E) For fiscal year 1991, \$212,500,000.

**CERCLA Sec. 111(p)(1)(F)**

(F) For fiscal year 1992, \$212,500,000.

**CERCLA Sec. 111(p)(1)(G)**

(G) For fiscal year 1983, \$212,500,000.

**CERCLA Sec. 111(p)(1)(H)**

(H) For fiscal year 1994, \$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 appropriated 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.

**CERCLA Sec. 111(p)(2)**

(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.

[111(p) added by PL 99-499; amended by PL 101-508]

**Sec. 111 [42 USC 9611] Uses of Fund**

**CERCLA Sec. 111(a)**

(a) 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 not more than \$5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994, 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). The President shall use the money in the Fund for the following purposes:

[111(a) revised by PL 99-499; amended by PL 101-508]

**CERCLA Sec. 111(a)(1)**

(1) Payment of governmental response costs incurred pursuant to section 104 of this title, including costs incurred pursuant to the Intervention on the High Seas Act.

**CERCLA Sec. 111(a)(2)**

(2) Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: Provided, however, That such costs must be approved under said plan and certified by the responsible Federal official.

**CERCLA Sec. 111(a)(3)**

(3) Payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 112 of this title, including those costs set out in subsection 112(c)(3) of this title.

**CERCLA Sec. 111(a)(4)**

(4) Payment of costs specified under subsection (c) of this section.

**CERCLA Sec. 111(a)(5)**

(5) Grants for technical assistance. The cost of grants under section 117(e) (relating to public participation grants for technical assistance).

[111(a)(5) added by PL 99-499]

**CERCLA Sec. 111(a)(6)**

(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.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this title.

[111(a)(6) added by PL 99-499]

**CERCLA Sec. 111(b)**

(b) (1) In General. Claims asserted and compensable but unsatisfied under provisions of section 311 of the Clean Water Act, which are modified by section 304 of this Act may be asserted against the Fund under this title; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this title for injury to, or destruction or loss of, natural resources, including cost for damage assessment: Provided, however, That any such claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State, 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.

[111(b)(1) amended by PL 99-499]

**CERCLA Sec. 111(b)(2)**

(2) Limitation on payment of natural resource claims.

**CERCLA Sec. 111(b)(2)(A)**

(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 .

**CERCLA Sec. 111(b)(2)(B)**

(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.

[111(b)(2) added by PL 99-499]

**CERCLA Sec. 111(c)**

(c) Uses of the Fund under subsection (a) of this section include

**CERCLA Sec. 111(c)(1)**

(1) The costs of assessing both short- term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance.

[111(c)(1) amended by PL 99-499]

**CERCLA Sec. 111(c)(2)**

(2) The costs of Federal or State or Indian tribe efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance.

[111(c)(2) amended by PL 99-499]

**CERCLA Sec. 111(c)(3)**

(3) Subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances.

[111(c)(3) amended by PL 99-499]

**CERCLA Sec. 111(c)(4)**

(4) 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, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long- latency diseases.

[111(c)(4) amended by PL 99-499]

**CERCLA Sec. 111(c)(5)**

(5) Subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead related to the purposes of this Act and section 311 of the Clean Water Act, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan.

[111(c)(5) amended by PL 99-499]

**CERCLA Sec. 111(c)(6)**

(6) Subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to

protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees.

[111(c)(6) amended by PL 99-499]

**CERCLA Sec. 111(c)(7)**

(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).

[111(c)(7) added by PL 99-499]

**CERCLA Sec. 111(c)(8)**

(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.

[111(c)(8) added by PL 99-499]

**CERCLA Sec. 111(c)(9)**

(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).

[111(c)(9) added by PL 99-499]

**CERCLA Sec. 111(c)(10)**

(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.

[111(c)(10) added by PL 99-499]

**CERCLA Sec. 111(c)(11)**

(11) Local government reimbursement. Reimbursements to local governments under section 123 , except that during the 8-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.

[111(c)(11) added by PL 99-499; amended by PL 101-508]

**CERCLA Sec. 111(c)(12)**

(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 \$20,000,000 for each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994.

[111(c)(12) added by PL 99-499; amended by PL 101-144; PL 101-508]

**CERCLA Sec. 111(c)(13)**

(13) Awards under section 109 . The costs of any awards granted under section 109(d).

**CERCLA Sec. 111(c)(14)**

(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).

**CERCLA Sec. 111(d)**

(d) (1) No money in the Fund may be used under subsection (c)(1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

**CERCLA Sec. 111(d)(2)**

(2) No money in the Fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

**CERCLA Sec. 111(e)**

(e) (1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

**CERCLA Sec. 111(e)(2)**

(2) In any fiscal year, 85 percent of the money credited to the Fund under title II of this Act shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section. 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.

[111(e)(2) amended by PL 99-499]

**CERCLA Sec. 111(e)(3)**

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities; 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.

[111(e)(3) amended by PL 99-499]

**CERCLA Sec. 111(e)(4)**

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

**CERCLA Sec. 111(f)**

(f) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State or Indian tribe operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d) of this title.

[111(f) amended by PL 99-499]

**CERCLA Sec. 111(g)**

(g) The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this title. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

**CERCLA Sec. 111(h)**

(h) [Repealed]

[111(h) repealed by PL 99-499]

**CERCLA Sec. 111(i)**

(i) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State 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, having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State 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, after adequate public notice and opportunity for hearing and consideration of all public comment.

[111(i) amended by PL 99-499]

**CERCLA Sec. 111(j)**

(j) The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 107(k) of this Act, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 107 of this Act or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.

**CERCLA Sec. 111(k)**

(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.

[111(k) revised by PL 99-499]

**CERCLA Sec. 111(l)**

(l) To the extent that the provisions of this Act permit, a foreign claimant may assert a claim to the same extent that a United States claimant may assert a claim if

**CERCLA Sec. 111(l)(1)**

(1) the release of a hazardous substance occurred (A) in the navigable waters or (B) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;

**CERCLA Sec. 111(l)(2)**

(2) the claimant is not otherwise compensated for his loss;

**CERCLA Sec. 111(l)(3)**

(3) the hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

**CERCLA Sec. 111(l)(4)**

(4) recovery is authorized by a treaty or an executive agreement between the United States and foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

**CERCLA Sec. 111(m)**

(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, 1991, 1992, 1993, and 1994. 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.

[111(m) added by PL 99-499; amended by PL 101-508]

**CERCLA Sec. 111(n)**

(n) Limitations on Research, Development, and Demonstration Program.

**CERCLA Sec. 111(n)(1)**

(1) Section 311(b). For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, 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.

**CERCLA Sec. 111(n)(2)**

(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):

**CERCLA Sec. 111(n)(2)(A)**

(A) For the fiscal year 1987, \$3,000,000.

**CERCLA Sec. 111(n)(2)(B)**

(B) For the fiscal year 1988, \$10,000,000.

**CERCLA Sec. 111(n)(2)(C)**

(C) For the fiscal year 1989, \$20,000,000.

**CERCLA Sec. 111(n)(2)(D)**

(D) For the fiscal year 1990, \$30,000,000.

**CERCLA Sec. 111(n)(2)(E)**

(E) For each of the fiscal years 1991, 1992, 1993, and 1994, \$35,000,000.

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

**CERCLA Sec. 111(n)(3)**

(3) Section 311(d). For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, 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).

[111(n) added by PL 99-499; amended by PL 101-508]

**CERCLA Sec. 111(o)**

(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.

[111(o) added by PL 99-499]

**CERCLA Sec. 111(p)**

(p) General Revenue Share of Superfund.

**CERCLA Sec. 111(p)(1)**

(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:

**CERCLA Sec. 111(p)(1)(A)**

(A) For fiscal year 1987, \$212,500,000.

**CERCLA Sec. 111(p)(1)(B)**

(B) For fiscal year 1988, \$212,500,000.

**CERCLA Sec. 111(p)(1)(C)**

(C) For fiscal year 1989, \$212,500,000.

**CERCLA Sec. 111(p)(1)(D)**

(D) For fiscal year 1990, \$212,500,000.

**CERCLA Sec. 111(p)(1)(E)**

(E) For fiscal year 1991, \$212,500,000.

**CERCLA Sec. 111(p)(1)(F)**

(F) For fiscal year 1992, \$212,500,000.

**CERCLA Sec. 111(p)(1)(G)**

(G) For fiscal year 1983, \$212,500,000.

**CERCLA Sec. 111(p)(1)(H)**

(H) For fiscal year 1994, \$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 appropriated 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.

**CERCLA Sec. 111(p)(2)**

(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.

[111(p) added by PL 99-499; amended by PL 101-508]

**Sec. 112 [42 USC 9612] Claims Procedure**

**CERCLA Sec. 112(a)**

(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.

[112(a) revised by PL 99-499]

**CERCLA Sec. 112(b)**

(b) (1) Prescribing Forms and Procedures. The President shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of any such claim shall, upon conviction, be fined 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.

[112(b)(1) amended by PL 99-499]

**CERCLA Sec. 112(b)(2)**

(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.

[112(b)(2) revised by PL 99-499]

**CERCLA Sec. 112(b)(3)**

(3) Burden of Proof. In any proceeding under this subsection, the claimant shall bear the burden of proving his claim.

[112(b)(3) revised by PL 99-499]

**CERCLA Sec. 112(b)(4)**

(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.

[112(b)(4) revised by PL 99-499]

**CERCLA Sec. 112(b)(5)**

(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.

[112(b)(5) added by PL 99-499]

**CERCLA Sec. 112(b)(6)**

(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.

[112(b)(6) added by PL 99-499]

**CERCLA Sec. 112(c)**

(c) (1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such

release.

**CERCLA Sec. 112(c)(2)**

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or costs resulting from a release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal that the claimant has under this Act or any other law.

**CERCLA Sec. 112(c)(3)**

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this title, and, without regard to any limitation of liability, all interest, administrative and adjudicative costs, and attorney's fees incurred by the Fund by reason of the claim. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

**CERCLA Sec. 112(d)**

(d) Statute of limitations.

**CERCLA Sec. 112(d)(1)**

(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.

**CERCLA Sec. 112(d)(2)**

(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:

**CERCLA Sec. 112(d)(2)(A)**

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

**CERCLA Sec. 112(d)(2)(B)**

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

**CERCLA Sec. 112(d)(3)**

(3) Minors and incompetents. The time limitations contained herein shall not begin to run

**CERCLA Sec. 112(d)(3)(A)**

(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

**CERCLA Sec. 112(d)(3)(B)**

(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.

[112(d) revised by PL 99-499]

**CERCLA Sec. 112(e)**

(e) Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this title shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this title shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally stopped from raising such question in connection with any other claim not covered or assertable against the Fund under this title arising from the same incident, transaction, or set of circumstances.

**CERCLA Sec. 112(f)**

(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.

[112(f) added by PL 99-499]

**Sec. 113 [42 USC 9613] Litigation, Jurisdiction and Venue**

**CERCLA Sec. 113(a)**

(a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

**CERCLA Sec. 113(b)**

(b) Except as provided in subsections (a) and (h) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

[113(b) amended by PL 99-499]

**CERCLA Sec. 113(c)**

(c) The provisions of subsections (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment of collection of any tax, as provided by title II of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

### **CERCLA Sec. 113(d)**

(d) No provision of this Act shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to enactment of this Act.

### **CERCLA Sec. 113(e)**

(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.

[113(e) added by PL 99-499]

### **CERCLA Sec. 113(f)**

(f) Contribution.

[113(f) added by PL 99-499]

#### **CERCLA Sec. 113(f)(1)**

(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 contribution 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 .

[113(1) added by PL 99-499]

#### **CERCLA Sec. 113(f)(2)**

(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.

#### **CERCLA Sec. 113(f)(3)**

(3) Persons not party to settlement.

##### **CERCLA Sec. 113(f)(3)(A)**

(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.

##### **CERCLA Sec. 113(f)(3)(B)**

(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).

**CERCLA Sec. 113(f)(3)(C)**

(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.

**CERCLA Sec. 113(g)**

(g) Period in Which Action May Be Brought.

**CERCLA Sec. 113(g)(1)**

(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:

**CERCLA Sec. 113(g)(1)(A)**

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

**CERCLA Sec. 113(g)(1)(B)**

(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 facilities). 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.

**CERCLA Sec. 113(g)(2)**

(2) Actions for recovery of costs. An initial action for recovery of the costs referred to in section 107 must be commenced

**CERCLA Sec. 113(g)(2)(A)**

(A) for 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

**CERCLA Sec. 113(g)(2)(B)**

(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.

**CERCLA Sec. 113(g)(3)**

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

**CERCLA Sec. 113(g)(3)(A)**

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

**CERCLA Sec. 113(g)(3)(B)**

(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.

**CERCLA Sec. 113(g)(4)**

(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.

**CERCLA Sec. 113(g)(5)**

(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.

**CERCLA Sec. 113(g)(6)**

(6) Minors and incompetents. The time limitations contained herein shall not begin to run

**CERCLA Sec. 113(g)(6)(A)**

(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

**CERCLA Sec. 113(g)(6)(B)**

(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.

**CERCLA Sec. 113(h)**

(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:

**CERCLA Sec. 113(h)(1)**

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

**CERCLA Sec. 113(h)(2)**

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

**CERCLA Sec. 113(h)(3)**

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

**CERCLA Sec. 113(h)(4)**

(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.

**CERCLA Sec. 113(h)(5)**

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

**CERCLA Sec. 113(i)**

(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.

**CERCLA Sec. 113(j)**

(j) Judicial Review.

### **CERCLA Sec. 113(j)(1)**

(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.

### **CERCLA Sec. 113(j)(2)**

(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.

### **CERCLA Sec. 113(j)(3)**

(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.

### **CERCLA Sec. 113(j)(4)**

(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.

### **CERCLA Sec. 113(k)**

(k) Administrative Record and Participation Procedures.

#### **CERCLA Sec. 113(k)(1)**

(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.

#### **CERCLA Sec. 113(k)(2)**

(2) Participation procedures.

##### **CERCLA Sec. 113(k)(2)(A)**

(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.

##### **CERCLA Sec. 113(k)(2)(B)**

(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:

**CERCLA Sec. 113(k)(2)(B)(i)**

(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.

**CERCLA Sec. 113(k)(2)(B)(ii)**

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

**CERCLA Sec. 113(k)(2)(B)(iii)**

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

**CERCLA Sec. 113(k)(2)(B)(iv)**

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

**CERCLA Sec. 113(k)(2)(B)(v)**

(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.

**CERCLA Sec. 113(k)(2)(C)**

(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.

**CERCLA Sec. 113(k)(2)(D)**

(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.

**CERCLA Sec. 113(k)(I)**

(I) 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 [42 USC 9614] Relationship to Other Law**

### **CERCLA Sec. 114(a)**

(a) Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State.

### **CERCLA Sec. 114(b)**

(b) Any person who receives compensation for removal costs or damages or claims pursuant to this Act shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this Act.

### **CERCLA Sec. 114(c)**

(c) Recycled Oil.

#### **CERCLA Sec. 114(c)(1)**

(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

##### **CERCLA Sec. 114(c)(1)(A)**

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

##### **CERCLA Sec. 114(c)(1)(B)**

(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.

#### **CERCLA Sec. 114(c)(2)**

(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

##### **CERCLA Sec. 114(c)(2)(A)**

(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

**CERCLA Sec. 114(c)(2)(B)**

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

**CERCLA Sec. 114(c)(3)**

(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.

**CERCLA Sec. 114(c)(4)**

(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.

[114(c) revised by PL 99-499]

**CERCLA Sec. 114(d)**

(d) Except as provided in this title, no owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this title shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this title shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.

**Sec. 115 [42 USC 9615] Authority to Delegate, Issue Regulations**

The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this title.

**Sec. 116 [42 USC 9616] Schedules**

[116 added by PL 99-499]

**CERCLA Sec. 116(a)**

(a) Assessment And Listing Of Facilities. It shall be a goal of this Act that, to the maximum extent practicable

**CERCLA Sec. 116(a)(1)**

(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 (CER-CLIS) including in each assessment a statement as to whether a

site inspection is necessary and by whom it should be carried out; and

**CERCLA Sec. 116(a)(2)**

(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).

**CERCLA Sec. 116(b)**

(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.

**CERCLA Sec. 116(c)**

(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.

**CERCLA Sec. 116(d)**

(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:

**CERCLA Sec. 116(d)(1)**

(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

**CERCLA Sec. 116(d)(2)**

(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.

**CERCLA Sec. 116(e)**

(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:

**CERCLA Sec. 116(e)(1)**

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

CERCLA Sec. 116(e)(2)

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

### **Sec. 117 [42 USC 9617] Public Participation**

[117 added by PL 99-499]

#### **CERCLA Sec. 117(a)**

(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 the following actions:

##### **CERCLA Sec. 117(a)(1)**

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

##### **CERCLA Sec. 117(a)(2)**

(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 proposal considered.

#### **CERCLA Sec. 117(b)**

(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).

#### **CERCLA Sec. 117(c)**

(c) Explanation Of Differences After adoption of a final remedial action plan

##### **CERCLA Sec. 117(c)(1)**

(1) if any remedial action is taken,

##### **CERCLA Sec. 117(c)(2)**

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

### **CERCLA Sec. 117(c)(3)**

(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.

### **CERCLA Sec. 117(d)**

(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.

### **CERCLA Sec. 117(e)**

(e) Grants For Technical Assistance.

#### **CERCLA Sec. 117(e)(1)**

(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.

#### **CERCLA Sec. 117(e)(2)**

(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 [42 USC 9618] High Priority for Drinking Water Supplies**

[118 added by PL 99-499]

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.

### **Sec. 119 [42 USC 9619] Response Action Contractors**

[119 added by PL 99-499]

**CERCLA Sec. 119(a)**

(a) Liability of Response Action Contractors.

**CERCLA Sec. 119(a)(1)**

(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.

**CERCLA Sec. 119(a)(2)**

(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.

**CERCLA Sec. 119(a)(3)**

(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.

**CERCLA Sec. 119(a)(4)**

(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.

**CERCLA Sec. 119(b)**

(b) Savings Provisions.

**CERCLA Sec. 119(b)(1)**

(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.

**CERCLA Sec. 119(b)(2)**

(2) Burden of plaintiff. Nothing in this section shall affect the plaintiff's burden of establishing liability under this title.

**CERCLA Sec. 119(c)**

(c) Indemnification.

**CERCLA Sec. 119(c)(1)**

(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.

**CERCLA Sec. 119(c)(2)**

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

**CERCLA Sec. 119(c)(2)(A)**

(A) the President;

**CERCLA Sec. 119(c)(2)(B)**

(B) any Federal agency;

**CERCLA Sec. 119(c)(2)(C)**

(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

**CERCLA Sec. 119(c)(2)(D)**

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

**CERCLA Sec. 119(c)(3)**

(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.

**CERCLA Sec. 119(c)(4)**

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

**CERCLA Sec. 119(c)(4)(A)**

(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.

**CERCLA Sec. 119(c)(4)(B)**

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

**CERCLA Sec. 119(c)(4)(C)**

(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.

**CERCLA Sec. 119(c)(5)**

(5) Limitations.

**CERCLA Sec. 119(c)(5)(A)**

(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.

**CERCLA Sec. 119(c)(5)(B)**

(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.

**CERCLA Sec. 119(c)(5)(C)**

(C) Contracts with potentially responsible parties.

**CERCLA Sec. 119(c)(5)(C)(i)**

(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.

**CERCLA Sec. 119(c)(5)(C)(ii)**

(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 cleanup 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 recover any amount from the potentially responsible party or under the indemnification agreement.

**CERCLA Sec. 119(c)(5)(D)**

(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.

**CERCLA Sec. 119(c)(5)(E)**

(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.

**CERCLA Sec. 119(c)(6)**

(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.

**CERCLA Sec. 119(c)(7)**

(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.

**CERCLA Sec. 119(c)(8)**

(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.

**CERCLA Sec. 119(d)**

(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 of this section.

**CERCLA Sec. 119(e)**

(e) Definitions. For purposes of this section

**CERCLA Sec. 119(e)(1)**

(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

**CERCLA Sec. 119(e)(1)(A)**

(A) the President;

**CERCLA Sec. 119(e)(1)(B)**

(B) any Federal agency;

**CERCLA Sec. 119(e)(1)(C)**

(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

**CERCLA Sec. 119(e)(1)(D)**

(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.

**CERCLA Sec. 119(e)(2)**

(2) Response action contractor. The term "response action contractor" means

**CERCLA Sec. 119(e)(2)(A)**

(A) any

**CERCLA Sec. 119(e)(2)(A)(i)**

(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

**CERCLA Sec. 119(e)(2)(A)(ii)**

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

**CERCLA Sec. 119(e)(2)(A)(iii)**

(iii) Recipients of grants (including sub-grantees) under section 126 for the training and education of workers who are or may be engaged in activities related to hazardous waste removal, containment, or emergency response under this Act; and

[119(e)(2)(A)(iii) added by PL 100-202]

**CERCLA Sec. 119(e)(2)(B)**

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

[119(e)(2)(B) amended by PL 101-584]

**CERCLA Sec. 119(e)(2)(C)**

(C) any surety who after October 16, 1990, and before January 1, 1996, provides a bid, performance or payment bond to a response action contractor, and begins activities to meet its obligations under such bond, but only in connection with such activities or obligations.

[119(e)(2)(C) added by PL 101-584; amended by PL 102-484]

**CERCLA Sec. 119(e)(3)**

(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.

**CERCLA Sec. 119(f)**

(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.

[119(g) added by PL 101-584]

**CERCLA Sec. 119(g)**

(g) Surety Bonds.

**CERCLA Sec. 119(g)(1)**

(1) If under the Act of August 24, 1935 (40 U.S.C. 270a-270d), commonly referred to as the "Miller Act", surety bonds are required for any direct Federal procurement of any response action contract and are not waived pursuant to the Act of April 29, 1941 (40 U.S.C. 270e-270f), they shall be issued in accordance with such Act of August 24, 1935.

[119(g)(1) amended by PL 102-484]

**CERCLA Sec. 119(g)(2)**

(2) If under applicable Federal law surety bonds are required for any direct Federal procurement of any response action contract, no right of action shall accrue on the performance bond issued on such response action contract to or for the use of any person other than the obligee named in the bond.

### **CERCLA Sec. 119(g)(3)**

(3) If under applicable Federal law surety bonds are required for any direct Federal procurement of any response action contract, unless otherwise provided for by the procuring agency in the bond, in the event of a default, the surety's liability on a performance bond shall be only for the cost of completion of the contract work in accordance with the plans and specifications less the balance of funds remaining to be paid under the contract, up to the penal sum of the bond. The surety shall in no event be liable on bonds to indemnify or compensate the obligee for loss or liability arising from personal injury or property damage whether or not caused by a breach of the bonded contract.

### **CERCLA Sec. 119(g)(4)**

(4) Nothing in this subsection shall be construed as preempting, limiting, superseding, affecting, applying to, or modifying any State laws, regulations, requirements, rules, practices or procedures. Nothing in this subsection shall be construed as affecting, applying to, modifying, limiting, superseding, or preempting any rights, authorities, liabilities, demands, actions, causes of action, losses, judgments, claims, statutes of limitation, or obligations under Federal or State law, which do not arise on or under the bond.

### **CERCLA Sec. 119(g)(5)**

(5) This subsection shall not apply to bonds executed before October 17, 1990, or after December 31, 1995.

[119(g)(5) amended by PL 102-484]

### **Sec. 120 [42 USC 9620] Federal Facilities**

[120 added by PL 99-499]

#### **CERCLA Sec. 120(a)**

(a) Application of Act to Federal Government.

#### **CERCLA Sec. 120(a)(1)**

(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 .

#### **CERCLA Sec. 120(a)(2)**

(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, regulations, 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.

**CERCLA Sec. 120(a)(3)**

(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.

**CERCLA Sec. 120(a)(4)**

(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.

**CERCLA Sec. 120(b)**

(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.

**CERCLA Sec. 120(c)**

(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:

**CERCLA Sec. 120(c)(1)**

(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.

**CERCLA Sec. 120(c)(2)**

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

**CERCLA Sec. 120(c)(3)**

(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.

**CERCLA Sec. 120(d)**

(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

**CERCLA Sec. 120(d)(1)**

(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

**CERCLA Sec. 120(d)(2)**

(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.

**CERCLA Sec. 120(e)**

(e) Required Action by Department.

**CERCLA Sec. 120(e)(1)**

(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.

**CERCLA Sec. 120(e)(2)**

(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 .

**CERCLA Sec. 120(e)(3)**

(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.

**CERCLA Sec. 120(e)(4)**

(4) Contents of Agreement. Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

**CERCLA Sec. 120(e)(4)(A)**

(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.

**CERCLA Sec. 120(e)(4)(B)**

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

**CERCLA Sec. 120(e)(4)(C)**

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

**CERCLA Sec. 120(e)(5)**

(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:

**CERCLA Sec. 120(e)(5)(A)**

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

**CERCLA Sec. 120(e)(5)(B)**

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

**CERCLA Sec. 120(e)(5)(C)**

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

**CERCLA Sec. 120(e)(5)(D)**

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

**CERCLA Sec. 120(e)(5)(E)**

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

**CERCLA Sec. 120(e)(5)(F)**

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

**CERCLA Sec. 120(e)(5)(G)**

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

**CERCLA Sec. 120(e)(6)**

(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.

**CERCLA Sec. 120(f)**

(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 .

**CERCLA Sec. 120(g)**

(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.

**CERCLA Sec. 120(h)**

(h) Property Transferred by Federal Agencies.

**CERCLA Sec. 120(h)(1)**

(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.

**CERCLA Sec. 120(h)(2)**

(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.

**CERCLA Sec. 120(h)(3)**

(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

**CERCLA Sec. 120(h)(3)(A)**

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

**CERCLA Sec. 120(h)(3)(A)(i)**

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

**CERCLA Sec. 120(h)(3)(A)(ii)**

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

**CERCLA Sec. 120(h)(3)(A)(iii)**

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

**CERCLA Sec. 120(h)(3)(B)**

(B) a covenant warranting that

**CERCLA Sec. 120(h)(3)(B)(i)**

(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

**CERCLA Sec. 120(h)(3)(B)(ii)**

(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 sub paragraph (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; and

**CERCLA Sec. 120(h)(3)(C)**

(C) a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer.

For purposes of subparagraph (B)(i) , all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long- term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property.

[120(h)(3) amended by PL 102-426]

**CERCLA Sec. 120(h)(4)**

(4) Identification of uncontaminated property.

**CERCLA Sec. 120(h)(4)(A)**

(A) In the case of real property to which this paragraph applies (as set forth in subparagraph (E)), the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall identify the real property on which no hazardous substances and no petroleum products or their derivatives were stored for one year or more, known to have been released, or disposed of. Such identification shall be based on an investigation of the real property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property. The identification shall consist, at a minimum, of a review of each of the following sources of information concerning the current and previous uses of the real property:

**CERCLA Sec. 120(h)(4)(A)(i)**

(i) A detailed search of Federal Government records pertaining to the property.

**CERCLA Sec. 120(h)(4)(A)(ii)**

(ii) Recorded chain of title documents regarding the real property.

**CERCLA Sec. 120(h)(4)(A)(iii)**

(iii) Aerial photographs that may reflect prior uses of the real property and that are reasonably obtainable through State or local government agencies.

**CERCLA Sec. 120(h)(4)(A)(iv)**

(iv) A visual inspection of the real property and any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property, and a visual inspection of properties immediately adjacent to the real property.

**CERCLA Sec. 120(h)(4)(A)(v)**

(v) A physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property.

**CERCLA Sec. 120(h)(4)(A)(vi)**

(vi) Reasonably obtainable Federal, State, and local government records of each adjacent facility where there has been a release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property.

**CERCLA Sec. 120(h)(4)(A)(vii)**

(vii) Interviews with current or former employees involved in operations on the real property.

Such identification shall also be based on sampling, if appropriate under the circumstances. The results of the identification shall be provided immediately to the Administrator and State and local government officials and made available to the public.

**CERCLA Sec. 120(h)(4)(B)**

(B) The identification required under subparagraph (A) is not complete until concurrence in the results of the identification is obtained, in the case of real property that is part of a facility on the National Priorities List, from the Administrator, or, in the case of real property that is not part of a facility on the National Priorities List, from the appropriate State official. In the case of a concurrence which is required from a State official, the concurrence is deemed to be obtained if, within 90 days after receiving a request for the concurrence, the State official has not acted (by either concurring or declining to concur) on the request for concurrence.

**CERCLA Sec. 120(h)(4)(C)**

(C) (i) Except as provided in clauses (ii), (iii), and (iv), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made at least 6 months before the termination of operations on the real property.

**CERCLA Sec. 120(h)(4)(C)(ii)**

(ii) In the case of real property described in subparagraph (E)(i)(II) on which operations have been closed or realigned or scheduled for closure or realignment pursuant to a base closure law described in subparagraph (E)(ii)(I) or (E)(ii)(II) by the date of the enactment of the Community Environmental Response Facilitation Act, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after such date of enactment.

**CERCLA Sec. 120(h)(4)(C)(iii)**

(iii) In the case of real property described in subparagraph (E)(i)(II) on which operations are closed or realigned or become scheduled for closure or realignment pursuant to the base closure law described in subparagraph (E)(ii)(II) after the date of the enactment of the Community Environmental Response Facilitation Act, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date by which a joint resolution disapproving the closure or realignment of the real property under section 2904(b) of such base closure law must be enacted, and such a joint resolution has not been enacted.

**CERCLA Sec. 120(h)(4)(C)(iv)**

(iv) In the case of real property described in subparagraphs (E)(i)(II) on which operations are closed or realigned pursuant to a base closure law described in subparagraph (E)(ii)(III) or (E)(ii)(IV), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date on which the real property is selected for closure or realignment pursuant to such a base closure law.

**CERCLA Sec. 120(h)(4)(D)**

(D) In the case of the sale or other transfer of any parcel of real property identified under subparagraph (A), the deed entered into for the sale or transfer of such property by the United States to any other person or entity shall contain

**CERCLA Sec. 120(h)(4)(D)(i)**

(i) a covenant warranting that any response action or corrective action found to be necessary after the date of such sale or transfer shall be conducted by the United States; and

**CERCLA Sec. 120(h)(4)(D)(ii)**

(ii) a clause granting the United States access to the property in any case in which a response action or corrective action is found to be necessary after such date at such property, or such access is necessary to carry out a response action or corrective action on adjoining property.

**CERCLA Sec. 120(h)(4)(E)**

(E) (i) This paragraph applies to

**CERCLA Sec. 120(h)(4)(E)(i)(I)**

(I) real property owned by the United States and on which the United States plans to terminate Federal Government operations, other than real property described in subclause (II); and

**CERCLA Sec. 120(h)(4)(E)(i)(II)**

(II) real property that is or has been used as a military installation and on which the United States plans to close or realign military operations pursuant to a base closure law.

**CERCLA Sec. 120(h)(4)(E)(ii)**

(ii) For purposes of this paragraph, the term "base closure law" includes the following:

**CERCLA Sec. 120(h)(4)(E)(ii)(I)**

(I) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

**CERCLA Sec. 120(h)(4)(E)(ii)(II)**

(II) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

**CERCLA Sec. 120(h)(4)(E)(ii)(III)**

(III) Section 2687 of title 10, United States Code.

**CERCLA Sec. 120(h)(4)(E)(ii)(IV)**

(IV) Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of enactment of the Community Environmental Response Facilitation Act.

**CERCLA Sec. 120(h)(4)(F)**

(F) Nothing in this paragraph shall affect, preclude, or otherwise impair the termination of Federal Government operations on real property owned by the United States.

[120(h)(4) added by PL 102-426]

**CERCLA Sec. 120(h)(5)**

(5) Notification of states regarding certain leases. In the case of real property owned by the United States, on which any hazardous substance or any petroleum product or its derivatives (including aviation fuel and motor oil) was stored for one year or more, known to have been released, or disposed of, and on which the United States plans to terminate Federal Government operations, the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall notify the State in which the property is located of any lease entered into by the United States that will encumber the property beyond the date of termination of operations on the property. Such notification shall be made before entering into the lease and shall include the length of the lease, the name of person to whom the property is leased, and a description of the uses that will be allowed under the lease of the property and buildings and other structures on the property.

[120(h)(5) added by PL 102-426]

**CERCLA Sec. 120(i)**

(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).

**CERCLA Sec. 120(j)**

(j) National Security.

**CERCLA Sec. 120(j)(1)**

(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.

**CERCLA Sec. 120(j)(2)**

(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.

[Editor's Note: Section 120(b) of PL 99-499 provides:

(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 [42 USC 9621] Cleanup Standards**

[121 added by PL 99-499]

**CERCLA Sec. 121(a)**

(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.

**CERCLA Sec. 121(b)**

(b) General Rules.

**CERCLA Sec. 121(b)(1)**

(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 off-site 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:

**CERCLA Sec. 121(b)(1)(A)**

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

**CERCLA Sec. 121(b)(1)(B)**

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

**CERCLA Sec. 121(b)(1)(C)**

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

**CERCLA Sec. 121(b)(1)(D)**

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

**CERCLA Sec. 121(b)(1)(E)**

(E) long-term maintenance costs;

**CERCLA Sec. 121(b)(1)(F)**

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

**CERCLA Sec. 121(b)(1)(G)**

(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.

**CERCLA Sec. 121(b)(2)**

(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.

**CERCLA Sec. 121(c)**

(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.

**CERCLA Sec. 121(d)**

(d) Degree of Cleanup.

**CERCLA Sec. 121(d)(1)**

(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.

**CERCLA Sec. 121(d)(2)**

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

**CERCLA Sec. 121(d)(2)(A)(i)**

(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

**CERCLA Sec. 121(d)(2)(A)(ii)**

(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.

**CERCLA Sec. 121(d)(2)(B)**

(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.

**CERCLA Sec. 121(d)(2)(B)(ii)**

(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

**CERCLA Sec. 121(d)(2)(B)(ii)(I)**

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

**CERCLA Sec. 121(d)(2)(B)(ii)(II)**

(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

**CERCLA Sec. 121(d)(2)(B)(ii)(III)**

(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.

**CERCLA Sec. 121(d)(2)(C)**

(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 generally by or associated with the remedial action selected by the President is land disposal in a State referred to in clause (ii) .

**CERCLA Sec. 121(d)(2)(C)(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.

**CERCLA Sec. 121(d)(2)(C)(iii)**

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

**CERCLA Sec. 121(d)(2)(C)(iii)(I)**

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

**CERCLA Sec. 121(d)(2)(C)(iii)(II)**

(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.

**CERCLA Sec. 121(d)(2)(C)(iii)(III)**

(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.

**CERCLA Sec. 121(d)(2)(C)(iv)**

(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 off-site facility for such remedial action.

**CERCLA Sec. 121(d)(3)**

(3) In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant off-site, such hazardous substance or pollutant or contaminant shall only be

transferred to a facility which is operating 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:

**CERCLA Sec. 121(d)(3)(A)**

(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.

**CERCLA Sec. 121(d)(3)(B)**

(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.

**CERCLA Sec. 121(d)(4)**

(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

**CERCLA Sec. 121(d)(4)(A)**

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

**CERCLA Sec. 121(d)(4)(B)**

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

**CERCLA Sec. 121(d)(4)(C)**

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

**CERCLA Sec. 121(d)(4)(D)**

(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;

**CERCLA Sec. 121(d)(4)(E)**

(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

**CERCLA Sec. 121(d)(4)(F)**

(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 the 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.

**CERCLA Sec. 121(e)**

(e) Permits and Enforcement.

**CERCLA Sec. 121(e)(1)**

(1) No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely on-site, where such remedial action is selected and carried out in compliance with this section.

**CERCLA Sec. 121(e)(2)**

(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.

**CERCLA Sec. 121(f)**

(f) State Involvement.

**CERCLA Sec. 121(f)(1)**

(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:

**CERCLA Sec. 121(f)(1)(A)**

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

**CERCLA Sec. 121(f)(1)(B)**

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

**CERCLA Sec. 121(f)(1)(C)**

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

**CERCLA Sec. 121(f)(1)(D)**

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

**CERCLA Sec. 121(f)(1)(E)**

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

**CERCLA Sec. 121(f)(1)(E)(i)**

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

**CERCLA Sec. 121(f)(1)(E)(ii)**

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

**CERCLA Sec. 121(f)(1)(E)(iii)**

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

**CERCLA Sec. 121(f)(1)(E)(iv)**

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

**CERCLA Sec. 121(f)(1)(E)(v)**

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

**CERCLA Sec. 121(f)(1)(F)**

(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.

**CERCLA Sec. 121(f)(1)(G)**

(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.

**CERCLA Sec. 121(f)(1)(H)**

(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.

**CERCLA Sec. 121(f)(2)**

(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.

**CERCLA Sec. 121(f)(2)(B)**

(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.

**CERCLA Sec. 121(f)(2)(C)**

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

**CERCLA Sec. 121(f)(3)**

(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.

**CERCLA Sec. 121(f)(3)(B)**

(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:

**CERCLA Sec. 121(f)(3)(B)(i)**

(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.

**CERCLA Sec. 121(f)(3)(B)(ii)**

(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.

**CERCLA Sec. 121(f)(3)(B)(iii)**

(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.

**CERCLA Sec. 121(f)(3)(C)**

(C) Nothing in this section precludes, and the court shall not enjoin, the Federal agency from taking any remedial action unrelated to or not inconsistent with such standard, requirement, criteria, or limitation.

**Additional Provisions**

[Note: Section 121(b) of PL 99-499 gives provisions on the effective date for section 121 . The text follows.]

(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 [42 USC 9622] Settlements.**

[122 added by PL 99-499]

**CERCLA Sec. 122(a)**

(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.

**CERCLA Sec. 122(b)**

(b) Agreements With Potentially Responsible Parties.

**CERCLA Sec. 122(b)(1)**

(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.

**CERCLA Sec. 122(b)(2)**

(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).

**CERCLA Sec. 122(b)(3)**

(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.

**CERCLA Sec. 122(b)(4)**

(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.

**CERCLA Sec. 122(c)**

(c) Effect of Agreement.

**CERCLA Sec. 122(c)(1)**

(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.

**CERCLA Sec. 122(c)(2)**

(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:

**CERCLA Sec. 122(c)(2)(A)**

(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.

**CERCLA Sec. 122(c)(2)(B)**

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

**CERCLA Sec. 122(d)**

(d) Enforcement.

**CERCLA Sec. 122(d)(1)**

(1) Cleanup agreements.

**CERCLA Sec. 122(d)(1)(A)**

(A) Consent decree. Whenever the President enters into an agreement under this section with any potentially responsible party with respect to remedial action under section 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.

**CERCLA Sec. 122(d)(1)(B)**

(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.

**CERCLA Sec. 122(d)(1)(C)**

(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.

**CERCLA Sec. 122(d)(2)**

(2) Public participation.

**CERCLA Sec. 122(d)(2)(A)**

(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.

**CERCLA Sec. 122(d)(2)(B)**

(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. 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.

**CERCLA Sec. 122(d)(3)**

(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.

**CERCLA Sec. 122(e)**

(e) Special notice procedures.

**CERCLA Sec. 122(e)(1)**

(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:

**CERCLA Sec. 122(e)(1)(A)**

(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.

### **CERCLA Sec. 122(e)(1)(B)**

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

### **CERCLA Sec. 122(e)(1)(C)**

(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.

### **CERCLA Sec. 122(e)(2)**

(2) Negotiation.

#### **CERCLA Sec. 122(e)(2)(A)**

(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.

#### **CERCLA Sec. 122(e)(2)(B)**

(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 proposal to the President for undertaking or financing the action under section 104(b).

#### **CERCLA Sec. 122(e)(2)(C)**

(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.

### **CERCLA Sec. 122(e)(3)**

(3) Preliminary allocation of responsibility.

**CERCLA Sec. 122(e)(3)(A)**

(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.

**CERCLA Sec. 122(e)(3)(B)**

(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.

**CERCLA Sec. 122(e)(3)(C)**

(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.

**CERCLA Sec. 122(e)(3)(D)**

(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.

**CERCLA Sec. 122(e)(3)(E)**

(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.

**CERCLA Sec. 122(e)(4)**

(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).

**CERCLA Sec. 122(e)(5)**

(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.

**CERCLA Sec. 122(e)(6)**

(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.

**CERCLA Sec. 122(f)**

(f) Covenant Not To Sue.

**CERCLA Sec. 122(f)(1)**

(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:

**CERCLA Sec. 122(f)(1)(A)**

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

**CERCLA Sec. 122(f)(1)(B)**

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

**CERCLA Sec. 122(f)(1)(C)**

(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.

**CERCLA Sec. 122(f)(1)(D)**

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

**CERCLA Sec. 122(f)(2)**

(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

**CERCLA Sec. 122(f)(2)(A)**

(A) which involves the transport and secure disposition off-site of hazardous substances in a facility meeting the requirements of section 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 off-site disposition and has thereafter required off-site disposition; or

**CERCLA Sec. 122(f)(2)(B)**

(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 substance no longer present any current or currently foreseeable future significant risk to public health, welfare or the environment, 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.

**CERCLA Sec. 122(f)(3)**

(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.

**CERCLA Sec. 122(f)(4)**

(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:

**CERCLA Sec. 122(f)(4)(A)**

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

**CERCLA Sec. 122(f)(4)(B)**

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

**CERCLA Sec. 122(f)(4)(C)**

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

**CERCLA Sec. 122(f)(4)(D)**

(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.

**CERCLA Sec. 122(f)(4)(E)**

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

**CERCLA Sec. 122(f)(4)(F)**

(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.

**CERCLA Sec. 122(f)(4)(G)**

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

**CERCLA Sec. 122(f)(5)**

(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.

**CERCLA Sec. 122(f)(6)**

(6) Additional Condition For Future Liability.

**CERCLA Sec. 122(f)(6)(A)**

(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.

**CERCLA Sec. 122(f)(6)(B)**

(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 the 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 release at or from the facility.

**CERCLA Sec. 122(f)(6)(C)**

(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.

**CERCLA Sec. 122(g)**

(g) De Minimis Settlements.

**CERCLA Sec. 122(g)(1)**

(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:

**CERCLA Sec. 122(g)(1)(A)**

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

**CERCLA Sec. 122(g)(1)(A)(i)**

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

**CERCLA Sec. 122(g)(1)(A)(ii)**

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

**CERCLA Sec. 122(g)(1)(B)**

(B) The potentially responsible party

**CERCLA Sec. 122(g)(1)(B)(i)**

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

**CERCLA Sec. 122(g)(1)(B)(ii)**

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

**CERCLA Sec. 122(g)(1)(B)(iii)**

(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 responsible 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.

**CERCLA Sec. 122(g)(2)**

(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).

**CERCLA Sec. 122(g)(3)**

(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.

**CERCLA Sec. 122(g)(4)**

(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.

**CERCLA Sec. 122(g)(5)**

(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.

**CERCLA Sec. 122(g)(6)**

(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.

**CERCLA Sec. 122(h)**

(h) Cost Recovery Settlement Authority.

**CERCLA Sec. 122(h)(1)**

(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.

**CERCLA Sec. 122(h)(2)**

(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.

**CERCLA Sec. 122(h)(3)**

(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.

**CERCLA Sec. 122(h)(4)**

(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.

**CERCLA Sec. 122(i)**

(i) Settlement Procedures.

**CERCLA Sec. 122(i)(1)**

(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 any 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.

**CERCLA Sec. 122(i)(2)**

(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.

**CERCLA Sec. 122(i)(3)**

(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.

**CERCLA Sec. 122(j)**

(j) Natural Resources.

**CERCLA Sec. 122(j)(1)**

(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.

**CERCLA Sec. 122(j)(2)**

(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.

**CERCLA Sec. 122(k)**

(k) Section Not Applicable To Vessels. The provisions of this section shall not apply to releases from a vessel.

**CERCLA Sec. 122(l)**

(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 Federal 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 .

**CERCLA Sec. 122(m)**

(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.

**Sec. 123 [42 USC 9623] Reimbursement to Local Governments**

[123 added by PL 99-499]

**CERCLA Sec. 123(a)**

(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.

**CERCLA Sec. 123(b)**

(b) Reimbursement.

**CERCLA Sec. 123(b)(1)**

(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.

**CERCLA Sec. 123(b)(2)**

(2) Local Funds Not Supplanted. Reimbursement under this section shall not supplant local funds normally provided for response.

**CERCLA Sec. 123(c)**

(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.

**CERCLA Sec. 123(d)**

(d) Procedure. Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator within one year after the enactment of the Superfund Amendments and Reauthorization Act of 1986.

**Sec. 124 [42 USC 9624] Methane Recovery**

[124 added by PL 99-499]

**CERCLA Sec. 124(a)**

(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:

**CERCLA Sec. 124(a)(1)**

(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.

**CERCLA Sec. 124(a)(2)**

(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.

**CERCLA Sec. 124(a)(3)**

(3) The owner or operator of such equipment shall not be subject to any action under section 106 with respect to such facility.

**CERCLA Sec. 124(b)**

(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:

**CERCLA Sec. 124(b)(1)**

(1) The release or threatened release was primarily caused by activities of the owner or operator of the equipment described in subsection (a).

**CERCLA Sec. 124(b)(2)**

(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 (1) shall be liable under this Act only for costs or damages primarily caused by the activities of such owner or operator.

**Additional Provisions**

[Note: Section 124(b) of PL 99-499 provides language about methane recovery under the Solid Waste Disposal Act. For the complete text of that Act, see p. 71:4001. The relevant provisions follow.]

(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 [42 USC 9625] Hazard Ranking System**

[125 added by PL 99-499]

**CERCLA Sec. 125(a)**

(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:

**CERCLA Sec. 125(a)(1)**

(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

**CERCLA Sec. 125(a)(2)**

(2) The extent of, and potential for, release of such hazardous constituents into the environment.

**CERCLA Sec. 125(a)(3)**

(3) The degree of risk to human health and the environment posed by such constituents.

**CERCLA Sec. 125(b)**

(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 [42 USC 9626] Indian Tribes**

[126 added by PL 99-499]

**CERCLA Sec. 126(a)**

(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).

**CERCLA Sec. 126(b)**

(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.

**CERCLA Sec. 126(c)**

(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.

### **CERCLA Sec. 126(d)**

(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:

#### **CERCLA Sec. 126(d)(1)**

(1) The applicable period of limitations has expired.

#### **CERCLA Sec. 126(d)(2)**

(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. 201 Short Title; Amendment of 1954 Code**

CERCLA Sec. 201(a)

(a) Short Title This title may be cited as the "Hazardous Substance Response Revenue Act of 1980."

#### **CERCLA Sec. 201(b)**

(b) Amendment of 1954 Code. Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

### **Sec. 4611 [26 USC 4611] Imposition of Tax**

CERCLA Sec. 4611(a)

(a) General Rule. There is hereby imposed a tax at the rate specified in subsection (c) on

#### **CERCLA Sec. 4611(a)(1)**

(1) crude oil received at a United States refinery, and

#### **CERCLA Sec. 4611(a)(2)**

(2) petroleum products entered into the United States for consumption, use, or warehousing.

[4611(a) and (b) amended by PL 99-499]

#### **CERCLA Sec. 4611(b)**

(b) Tax on Certain Uses and Exportation.

#### **CERCLA Sec. 4611(b)(1)**

(1) In General. If

#### **CERCLA Sec. 4611(b)(1)(A)**

(A) any domestic crude oil is used in or exported from the United States, and

**CERCLA Sec. 4611(b)(1)(B)**

(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a), then a tax at the rate specified in subsection (c) is hereby imposed on such crude oil.

**CERCLA Sec. 4611(b)(2)**

(2) Exception for Use on Premises where Produced. Paragraph (1) shall not apply to any use of crude oil for extracting oil or natural gas on the premises where such crude oil was produced.

**CERCLA Sec. 4611(c)**

(c) Rate of Tax.

**CERCLA Sec. 4611(c)(1)**

(1) In General. The rate of the taxes imposed by this section is the sum of

**CERCLA Sec. 4611(c)(1)(A)**

(A) the Hazardous Substance Superfund financing rate and

**CERCLA Sec. 4611(c)(1)(B)**

(B) the Oil Spill Liability Trust Fund financing rate.

**CERCLA Sec. 4611(c)(2)**

(2) Rates. For purposes of paragraph (1)

**CERCLA Sec. 4611(c)(2)(A)**

(A) the Hazardous Substance Superfund financing rate is 9.7 cents a barrel, and

**CERCLA Sec. 4611(c)(2)(B)**

(B) the Oil Spill Liability Trust Fund financing rate is 5 cents a barrel.

[4611(c) added by PL 99-499; revised by PL 99-509; amended by PL 101-221 ; PL 101-239]

**CERCLA Sec. 4611(d)**

(d) Persons Liable for Tax.

**CERCLA Sec. 4611(d)(2)**

(2) Crude Oil Received at Refinery. The tax imposed by subsection (a)(2) shall be paid by the person entering the product for consumption, use, or warehousing.

**CERCLA Sec. 4611(d)(3)**

(3) Tax on Certain Uses or Exports. The tax imposed by subsection (b) shall be paid by the person using or exporting the crude oil, as the case may be.

[Former 4611(c) redesignated as (d) by PL 99-499]

**CERCLA Sec. 4611(e)**

(e) Application of Hazardous Substance Superfund Financing Rate.

**CERCLA Sec. 4611(e)(1)**

(1) In General. Except as provided in paragraphs (2) and (3), by the Hazardous Substance Superfund financing rate under this section shall apply after December 31, 1986, and before January 1, 1992.

**CERCLA Sec. 4611(e)(2)**

(2) No Tax if Unobligated Balance in Fund Exceeds \$3,500,000,000. If on December 31, 1993, or December 31, 1994.

**CERCLA Sec. 4611(e)(2)(A)**

(A) the unobligated balance in the Hazardous Substance Superfund exceeds \$3,500,000,000, and

**CERCLA Sec. 4611(e)(2)(B)**

(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 1994 or 1995, 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 (to the extent attributable to the Hazardous Substance Superfund financing rate) during 1994 or 1995, as the case may be.

**CERCLA Sec. 4611(e)(3)**

(3) No tax if amounts collected exceed \$6,650,000,000.

**CERCLA Sec. 4611(e)(3)(A)**

(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 (to the extent attributable to the Hazardous Substance Superfund financing rate), and sections 4661 and 4671 and credited to the Hazardous Substance Superfund during the period beginning January 1, 1987, and ending December 31, 1995.

**CERCLA Sec. 4611(e)(3)(B)**

(B) Termination if \$11,970,000,000 Credited Before January 1, 1992. If the Secretary estimates under subparagraph (A) that more than \$11,970,000,000 will be credited to the Fund before January 1, 1992, the Hazardous Substance Superfund financing rate under this section shall not apply after the date on which (as estimated by the Secretary) \$11,970,000,000 will be so credited to the Fund.

[Former 4611(d) revised and redesignated as (e) by PL 99-499; amended by PL 99-509; PL 101-508]

**CERCLA Sec. 4611(f)**

(f) Application of Oil Spill Liability Trust Fund Financing Rate.

[4611(f) added by PL 99-509; revised by PL 101-239]

**CERCLA Sec. 4611(f)(1)**

(1) In General. Except as provided in paragraph (2), the Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1989, and before January 1, 1995.

**CERCLA Sec. 4611(f)(2)**

(2) No Tax if Unobligated Balance in Fund Exceeds \$1,000,000,000. The Oil Spill Liability Trust Fund financing rate shall not apply during any calendar quarter if the Secretary estimates that as of the close of the preceding calendar quarter the unobligated balance in the Oil Spill Liability Trust Fund exceeds \$1,000,000,000.

**Sec. 4612 [26 USC 4612] Definitions and Special Rules**

CERCLA Sec. 4612(a)

(a) Definitions. For purposes of this subchapter

**CERCLA Sec. 4612(a)(1)**

(1) Crude Oil. The term "crude oil" includes crude oil condensates and natural gasoline.

**CERCLA Sec. 4612(a)(2)**

(2) Domestic Crude Oil. The term "domestic crude oil" means any crude oil produced from a well located in the United States.

**CERCLA Sec. 4612(a)(3)**

(3) Petroleum Product. The term "petroleum product" includes crude oil.

**CERCLA Sec. 4612(a)(4)**

(4) United States.

**CERCLA Sec. 4612(a)(4)(A)**

(A) In General. The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

**CERCLA Sec. 4612(a)(4)(B)**

(B) United States Includes Continental Shelf Areas. The principles of section 638 shall apply for purposes of the term "United States."

**CERCLA Sec. 4612(a)(4)(C)**

(C) United States Includes Foreign Trade Zones. The term "United States" includes any foreign trade zone of the United States.

**CERCLA Sec. 4612(a)(5)**

(5) United States Refinery. The term "United States refinery" means any facility in the United States at which crude oil is refined.

**CERCLA Sec. 4612(a)(6)**

(6) Refineries which Produce Natural Gasoline. In the case of any United States refinery which produces natural gasoline from natural gas, the gasoline so produced shall be treated as received at such refinery at the time so produced.

**CERCLA Sec. 4612(a)(7)**

(7) Premises. The term "premises" has the same meaning as when used for purposes of determining gross income from the property under section 613.

**CERCLA Sec. 4612(a)(8)**

(8) Barrel. The term "barrel" means 42 United States gallons.

**CERCLA Sec. 4612(a)(9)**

(9) Fractional Part of Barrel. In the case of a fraction of a barrel, the tax imposed by section 4511 shall be the same fraction of the amount of such tax imposed on a whole barrel.

**CERCLA Sec. 4612(b)**

(b) Only 1 Tax Imposed With Respect to Any Product. No tax shall be imposed by section 4611 with respect to any petroleum product if the person who would be liable for such tax established that a prior tax imposed by such section has been imposed with respect to such product.

**CERCLA Sec. 4612(c)**

(c) Credit Where Crude Oil Returned to Pipeline. Under regulations prescribed by the Secretary, if an operator of a United States refinery

**CERCLA Sec. 4612(c)(1)**

(1) removes crude oil from a pipeline, and

**CERCLA Sec. 4612(c)(2)**

(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 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.

[4612(c) added by PL 99-499]

**CERCLA Sec. 4612(d)**

(d) Credit Against Portion of Tax Attributable to Oil Spill Rate. There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate for any period an amount equal to the excess of

**CERCLA Sec. 4612(d)(1)**

(1) the sum of

**CERCLA Sec. 4612(d)(1)(A)**

(A) the aggregate amounts paid by the taxpayer before January 1, 1987, into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund, and

**CERCLA Sec. 4612(d)(1)(B)**

(B) the interest accrued on such amounts before such date, over

**CERCLA Sec. 4612(d)(2)**

(2) the amount of such payments taken into account under this subsection for all prior periods. The preceding sentence shall also apply to amounts paid by the taxpayer into the Trans-Alaska Pipeline Liability Fund to the extent of amounts transferred from such Fund into the Oil Spill Liability Trust Fund. For purposes of this subsection, all taxpayers which would be members of the same affiliated group (as defined in section 1504(a)) if section 1504(a)(2) were applied by substituting "100 percent" for "80 percent" shall be treated as 1 taxpayer.

[4612(d) added by PL 99-509; amended by PL 101-239; PL 101-380]

**CERCLA Sec. 4612(e)**

(e) Disposition of Revenue 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 4611.

[4612(c) redesignated as (d) by PL 99-499; redesignated as (e) by PL 99-509]