ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6363 SENATE JUDICIARY

767

acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions." *Id.* We agree with the district court that under no view of the evidence could the site-owners satisfy either of these proof requirements.

First, the site-owners could not establish the absence of a direct or indirect contractual relationship necessary to maintain the affirmative defense. They concede they entered into a lease agreement with COCC. They accepted rent from COCC, and after SCRDI was incorporated, they accepted rent from SCRDI. *See United States v. Northernaire Plating Co.*, 670 F.Supp. 742, 747–48 (W.D.Mich.1987) (owner who leased facility to disposing party could not assert affirmative defense). Second, the site-owners presented no evidence that they took precautionary action against the foreseeable conduct of COCC or SCRDI. They argued to the trial court that, although they were aware COCC was a chemical manufacturing company, they were completely ignorant of all waste disposal activities at Bluff Road before 1977. They maintained that they never inspected the site prior to that time. In our view, the statute does not sanction such willful or negligent blindness on the part of absentee owners. The district court committed no error in entering summary judgment against the site-owners.

B. *Generator Defendants' Liability*

The generator defendants first contend that the district court misinterpreted section 107(a)(3) because it failed to read into the statute a requirement that the governments prove a nexus between the waste they sent to the site and the resulting environmental harm. They maintain that the statutory phrase "containing such hazardous substances" requires proof that the specific substances they generated and sent to the site were present at the facility at the time of release. The district court held, however, that the statute was satisfied by proof that hazardous substances "like" those contained in the generator defendants' waste were found at the site. *SCRDI*, 653 F.Supp. at 991–92. We agree with the district court's interpretation.

[4] Reduced of surplus language, sections 107(a)(3) and (4) impose liability on off-site waste generators who:

> "arranged for disposal ... of hazardous substances ... at any facility ... *containing such hazardous substances* ... from which there is a release ... of a hazardous substance."

42 U.S.C.A. §§ 9607(a)(3), (4) (West Supp. 1987) (emphasis supplied). In our view, the plain meaning of the adjective "such" in the phrase "containing such hazardous substances" is "[a]like, similar, of the like kind." *Black's Law Dictionary* 1284 (5th ed. 1979). As used in the statute, the phrase "such hazardous substances" denotes hazardous substances alike, similar, or of a like kind to those that were present in a generator defendant's waste or that could have been produced by the mixture of the defendant's waste with other waste present at the site. It does not mean that the plaintiff must trace the ownership of each generic chemical compound found at a site. Absent proof that a generator defendant's specific waste remained at a facility at the time of release, a showing of chemical similarity between hazardous substances is sufficient.[15]

The overall structure of CERCLA'S liability provisions also militates against the generator defendants' "proof of ownership" argument. In *Shore Realty*, the Second Circuit held with respect to site-owners that requiring proof of ownership at any time later than the time of disposal would go far toward rendering the section 107(b) defenses superfluous. *Shore Realty*, 759 F.2d at 1044. We agree with the court's

15. CERCLA plaintiffs need not perform exhaustive chemical analyses of hazardous substances found at a disposal site. *See SCRDI*, 653 F.Supp. at 993 n. 6. They must, however, present evidence that a generator defendant's waste was shipped to a site and that hazardous substances similar to those contained in the defendant's waste remained present at the time of release. The defendant, of course, may in turn present evidence of an affirmative defense to liability.

reading of the statute and conclude that its reasoning applies equally to the generator defendants' contentions. As the statute provides—"[n]otwithstanding any other provision or rule of law"—liability under section 107(a) is "subject *only* to the defenses set forth" in section 107(b). 42 U.S.C.A. § 9607(a) (West Supp.1987) (emphasis added). Each of the three defenses [16] established in section 107(b) "carves out from liability an exception based on causation." *Shore Realty,* 759 F.2d at 1044. Congress has, therefore, allocated the burden of disproving causation to the defendant who profited from the generation and inexpensive disposal of hazardous waste. We decline to interpret the statute in a way that would neutralize the force of Congress' intent.[17]

Finally, the purpose underlying CERCLA's liability provisions counsels against the generator defendants' argument. Throughout the statute's legislative history, there appears the recurring theme of facilitating prompt action to remedy the environmental blight of unscrupulous waste disposal.[18] In deleting causation language from section 107(a), we assume as have many other courts, that Congress knew of the synergistic and migratory capacities of leaking chemical waste, and the technological infeasibility of tracing improperly disposed waste to its source.[19] In view of this, we will not frustrate the statute's salutary goals by engrafting a "proof of ownership" requirement, which in practice, would be as onerous as the language Congress saw fit to delete. *See United States v. Wade,* 577 F.Supp. 1326, 1332 (E.D.Pa.1983) ("To require a plaintiff under CERCLA to 'fingerprint' wastes is to eviscerate the statute.").

[5] The generator defendants next argue that the trial court ignored evidence that established genuine factual issues as to the existence of an affirmative defense to liability. They maintain that summary judgment was inappropriate because they presented some evidence that all of their waste had been removed from Bluff Road prior to cleanup. We agree with the trial court, however, that the materials on which the generator defendants rely were insufficient to create a genuine issue of material fact.

The generator defendants offered only conclusory allegations, principally based "on information and belief," that their waste, originally deposited at Bluff Road, was at some time prior to 1979 transported from that facility to other sites operated by SCRDI.[20] To withstand summary judg-

16. In addition to the limited third-party defense discussed above, sections 107(b)(1) and (2) respectively allow defendants to avoid liability by proving that the release and resulting damages were "caused solely" by an act of God or an act of war. 42 U.S.C. § 9607(b)(1), (2).

17. In fact, Congress specifically declined to include a similar nexus requirement in CERCLA. As the Second Circuit in *Shore Realty* observed, an early House version of what ultimately became section 107(a) limited liability to "any person who caused or contributed to the release or threatened release." 759 F.2d at 1044 (quoting H.R.Rep. 7020, 96th Cong., 2d Sess. § 3071(a) (1980), *reprinted in 2 A Legislative History of the Comprehensive Environmental Response, Compensation and Liability Act of 1980* at 438. As ultimately enacted after House and Senate compromise, however, CERCLA "imposed liability on classes of persons without reference to whether they caused or contributed to the release or threat of release." *Shore Realty,* 759 F.2d at 1044. The legislature thus eliminated the element of causation from the plaintiff's liability case. *Id.; see also United States v. Bliss,* 667 F.Supp. 1298, 1309 (E.D.Mo.1987) ("traditional tort notions, such as proximate cause, do not apply"); *Violet v. Picillo,* 648 F.Supp. 1283, 1290–93 (D.R.I.1986) (minimal causal nexus); *United States v. Conservation Chemical Co.,* 619 F.Supp. 162, 190 (W.D.Mo. 1985); *United States v. Wade,* 577 F.Supp. 1326, 1331–34 (E.D.Pa.1983).

18. The legislative history underlying the Superfund Amendments and Reauthorization Act of 1986 echoed this theme with even greater force than that underlying CERCLA's original enactment in 1980.

19. In advancing their arduous proof requirements, the generator defendants make little mention of the fact that leaking chemicals may combine to form new compounds or escape into the atmosphere before proper response action can be taken. *See* cases cited *supra* note 17.

20. The generator defendants offered the following materials:

1. An officer of the company that oversaw the final cleanup at Bluff Road testified that he

ment under section 107(b)(3), however, the generator defendants had to produce specific evidence creating a genuine issue that all of their waste was removed from the site prior to the release of hazardous substances there. *See* 42 U.S.C. § 9607(b)(3).[21] In light of the uncontroverted proof that containers bearing each of the defendants' markings remained present at the site at the time of cleanup and the fact that hazardous substances chemically similar to those contained in the generators' waste were found, the generator defendants' affidavits and deposition testimony simply failed to establish complete removal as a genuine issue. *See Celotex v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) (summary judgment appropriately granted against nonmoving party who failed to produce evidence supporting an element essential to its case on which it bore burden of proof at trial).

III.

The appellants next challenge the district court's imposition of joint and several liability for the governments' response costs.[22] The court concluded that joint and several liability was appropriate because the environmental harm at Bluff Road was "indivisible" and the appellants had "failed to meet their burden of proving otherwise." *SCRDI*, 653 F.Supp. at 994. We agree with its conclusion.

[6] While CERCLA does not mandate the imposition of joint and several liability, it permits it in cases of indivisible harm. *See Shore Realty*, 7[illegible]9 F.2d at 1042 n. 13; *United States v. ChemDyne*, 572 F.Supp. 802, 810–11 (S.D.Ohio 1983). In each case, the court must consider traditional and evolving principles of federal common law,[23] which Congress has left to the courts to supply interstitially.

[7] Under common law rules, when two or more persons act independently to cause a single harm for which there is a reasonable basis of apportionment according to the contribution of each, each is held liable only for the portion of harm that he causes.

did not know whether drums bearing Allied's label actually contained Allied's waste when they were removed from the site.

2. An officer of EM Industries averred that SCRDI assured him prior to 1980 that none of EM Industries' waste had been deposited at Bluff Road.

3. An officer of Monsanto averred that two of his employees inspected the site in 1979, and while they "did not explore all areas of the site, upon information and belief they did not observe any drums of material taken from [Monsanto's plant]."

4. An officer of Allied averred that SCRDI's site manager at Bluff Road told him in 1979 that all of Allied's waste was removed from the site before 1977.

None of these largely second-hand allegations were supported by evidence tending to show that any of the generators' waste materials were actually taken away from the site. "The mere existence of a scintilla of evidence in support of the [nonmoving party's] position will be insufficient [to avoid summary judgment]; there must be evidence on which the [finder of fact] could reasonably find for the [nonmoving party]." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 2512, 91 L.Ed.2d 202 (1986).

21. Had they produced such evidence, it would have created an issue as to whether the "release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by ... an act or omission of a third party." 42 U.S.C. § 9607(b)(3).

22. The site-owners limit their joint and several liability argument to the contention that it is inequitable under the circumstances of this case, *i.e.*, their limited degree of participation in waste disposal activities at Bluff Road. As we have stated, however, such equitable factors are relevant in subsequent actions for contribution. They are not pertinent to the question of joint and several liability, which focuses principally on the divisibility among responsible parties of the harm to the environment.

23. As many courts have noted, a proposed requirement that joint and several liability be imposed in all CERCLA cases was deleted from the final version of the bill. *See, e.g., Chem-Dyne*, 572 F.Supp. at 806. "The deletion," however, "was not intended as a rejection of joint and several liability," but rather "to have the scope of liability determined under common law principles." *Id.* at 808. We adopt the *Chem-Dyne* court's thorough discussion of CERCLA's legislative history with respect to joint and several liability. We note that the approach taken in *Chem-Dyne* was subsequently confirmed as correct by Congress in its consideration of SARA's contribution provisions. *See* H.R.Rep. No. 253(I), 99th Cong.2d Sess., 79–80 (1985), *reprint-*

Edmonds v. Compagnie Generale Transatlantique, 443 U.S. 256, 260 n. 8, 99 S.Ct. 2753, 2756 n. 8, 61 L.Ed.2d 521 (1979). When such persons cause a single and indivisible harm, however, they are held liable jointly and severally for the entire harm. *Id.* (citing Restatement (Second) of Torts § 433A (1965)). We think these principles, as reflected in the Restatement (Second) of Torts, represent the correct and uniform federal rules applicable to CERCLA cases.

Section 433A of the Restatement provides:

> (1) Damages for harm are to be apportioned among two or more causes where
> (a) there are distinct harms, or
> (b) there is a reasonable basis for determining the contribution of each cause to a single harm.
> (2) Damages for any other harm cannot be apportioned among two or more causes.

Restatement (Second) of Torts § 433A (1965).

Placing their argument into the Restatement framework, the generator defendants concede that the environmental damage at Bluff Road constituted a "single harm," but contend that there was a reasonable basis for apportioning the harm. They observe that each of the off-site generators with whom SCRDI contracted sent a potentially identifiable volume of waste to the Bluff Road site, and they maintain that liability should have been apportioned according to the volume they deposited as compared to the total volume disposed of there by all parties. In light of the conditions at Bluff Road, we cannot accept this method as a basis for apportionment.

[8–10] The generator defendants bore the burden of establishing a reasonable basis for apportioning liability among responsible parties. *Chem-Dyne*, 572 F.Supp. at 810; Restatement (Second) of Torts § 433B (1965).[24] To meet this burden, the generator defendants had to establish that the environmental harm at Bluff Road was divisible among responsible parties. They presented no evidence, however, showing a relationship between waste volume, the release of hazardous substances, and the harm at the site.[25] Further, in light of the commingling of hazardous substances, the district court could not have reasonably apportioned liability without some evidence disclosing the individual and interactive qualities of the substances deposited there. Common sense counsels that a million gallons of certain substances could be mixed together without significant consequences, whereas a few pints of others improperly mixed could result in disastrous consequences.[26] Under other circumstances proportionate volumes of hazardous substances may well be probative of contributory harm.[27] In this case, however, volume could not establish the effec-

ed in 1986 U.S.Code Cong. & Admin.News at 2835, 2861–62.

24. Section 433(B)(2) of the Restatement provides:

> Where the tortious conduct of two or more actors has combined to bring about harm to the plaintiff, and one or more of the actors seeks to limit his liability on the ground that the harm is capable of apportionment among them, the burden of proof as to the apportionment is upon each such actor.

Restatement (Second) of Torts § 433(B)(2) (1965).

25. At minimum, such evidence was crucial to demonstrate that a volumetric apportionment scheme was reasonable. The governments presented considerable evidence identifying numerous hazardous substances found at Bluff Road. An EPA investigator reported, for example, that in the first cleanup phase RAD Services encountered substances "in every hazard class, including explosives such as crystallized dynamite and nitroglycerine. Numerous examples were found of oxidizers, flammable and nonflammable liquids, poisons, corrosives, containerized gases, and even a small amount of radioactive material." Under these circumstances, volumetric apportionment based on the overall quantity of waste, as opposed to the quantity and quality of hazardous substances contained in the waste would have made little sense.

26. We agree with the district court that evidence disclosing the relative toxicity, migratory potential, and synergistic capacity of the hazardous substances at the site would be relevant to establishing divisibility of harm.

27. Volumetric contributions provide a reasonable basis for apportioning liability only if it can be reasonably assumed, or it has been demonstrated, that independent factors had no substantial effect on the harm to the environment.

tive contribution of each waste generator to the harm at the Bluff Road site.

Although we find no error in the trial court's imposition of joint and several liability, we share the appellants' concern that they not be ultimately responsible for reimbursing more than their just portion of the governments' response costs.[28] In its refusal to apportion liability, the district court likewise recognized the validity of their demand that they not be required to shoulder a disproportionate amount of the costs. It ruled, however, that making the governments whole for response costs was the primary consideration and that cost allocation was a matter "more appropriately considered in an action for contribution between responsible parties after plaintiff has been made whole." *SCRDI*, 653 F.Supp. at 995 & n. 8. Had we sat in place of the district court, we would have ruled as it did on the apportionment issue, but may well have retained the action to dispose of the contribution questions. *See* 42 U.S.C.A. § 9613(f) (West Supp.1987). That procedural course, however, was committed to the trial court's discretion and we find no abuse of it. As we have stated, the defendants still have the right to sue responsible parties for contribution, and in that action they may assert both legal and equitable theories of cost allocation.[29]

IV.

The generator defendants raise numerous constitutional challenges to the district court's interpretation and application of CERCLA. They contend that the imposition of "disproportionate" liability without proof of causation violated constitutional limitations on retroactive statutory application and that it converted CERCLA into a bill of attainder and an *ex post facto* law. They further assert, along with the site-owners, that the trial court's construction of CERCLA infringed their substantive due process rights.

[11] The district court held that CERCLA does not create retroactive liability, but imposes a prospective obligation for the post-enactment environmental consequences of the defendants' past acts. *SCRDI*, 653 F.Supp. at 996. Alternatively, the court held that even if CERCLA is understood to operate retroactively, it nonetheless satisfies the dictates of due process because its liability scheme is rationally related to a valid legislative purpose. *Id.* at 997–98. We agree with the court's latter holding, and we find no merit to the generator defendants' bill of attainder and *ex post facto* arguments.[30]

Cf. Restatement (Second) of Torts § 433A comment d, illustrations 4, 5 (1965).

28. The final judgment holds the defendants liable for slightly less than half of the total costs incurred in the cleanup, while it appears that the generator defendants collectively produced approximately 22% of the waste that SCRDI handled. Other evidence indicates that agencies of the federal government produced more waste than did generator defendant Monsanto, and suggests that the amounts contributed by the settling parties do not bear a strictly proportionate relationship to the total costs of cleaning the facility. We note, however, that a substantial portion of the final judgment is attributable to litigation costs. We also observe that the EPA has contributed upwards of $50,000 to the Bluff Road cleanup, and that any further claims against the EPA and other responsible government instrumentalities may be resolved in a contribution action pursuant to CERCLA section 113(f).

29. Contrary to the generator defendants' request, it would be premature for us to interpret the effect of settlement on the rights of nonsettling parties in contribution actions under CERCLA section 113(f)(2), 42 U.S.C.A. § 9613(f)(2) (West Supp.1987). We observe, however, that the possibility this subsection precludes contribution actions against settling parties signals legislative policy to encourage settlement in CERCLA cleanup actions. At the same time, we recognize that the language of CERCLA's new contribution provisions reveals Congress' concern that the relative culpability of each responsible party be considered in determining the proportionate share of costs each must bear.

30. The generator defendants also assert, for the first time on appeal, that the district court's interpretation of CERCLA violated the separation of powers doctrine. They argue that the court's imposition of strict liability without proof of factual causation departed from Congress' intent, and that the court strayed from common-law principles in holding the defendants jointly liable. These arguments constitute little more than a repackaging of the statutory interpretation contentions we have already considered and rejected. Because we perceive no

Many courts have concluded that Congress intended CERCLA's liability provisions to apply retroactively to pre-enactment disposal activities of off-site waste generators. They have held uniformly that retroactive operation survives the Supreme Court's tests for due process validity.[31] We agree with their analyses.

In *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 96 S.Ct. 2882, 49 L.Ed.2d 752 (1976), the Supreme Court, in a different context, rejected a due process challenge to the retroactive operation of the liability provisions in the Black Lung Benefits Act of 1972. The Court stated that "a presumption of constitutionality" attaches to "legislative Acts adjusting the burdens and benefits of economic life," and that "the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Id.* at 15, 96 S.Ct. at 2892. It reasoned that although the Act imposed new liability for disabilities developed prior to its enactment, its operation was "justified as a rational measure to spread the costs of the employees' disabilities to those who have profited from the fruits of their labor." *Id.* at 13, 96 S.Ct. at 2893.[32]

The reasoning of *Turner Elkhorn* applies with great force to the retroactivity contentions advanced here. While the generator defendants profited from inexpensive waste disposal methods that may have been technically "legal" prior to CERCLA's enactment, it was certainly foreseeable at the time that improper disposal could cause enormous damage to the environment. CERCLA operates remedially to spread the costs of responding to improper waste disposal among all parties that played a role in creating the hazardous conditions. Where those conditions are indivisible, joint and several liability is logical, and it works to ensure complete cost recovery. We do not think these consequences are "particularly harsh and oppressive," *United States Trust Co. v. New Jersey*, 431 U.S. 1, 17 n. 13, 97 S.Ct. 1505, 1515 n. 13, 52 L.Ed.2d 92 (1977) (retrospective civil liability not unconstitutional unless it is particularly harsh and oppressive), and we agree with the Eighth Circuit that retroactive application of CERCLA does not violate due process. *United States v. Northeastern Pharmaceutical & Chemical Co., Inc.*, 810 F.2d 726, 734 (8th Cir. 1986), *cert. denied*, — U.S. —, 108 S.Ct. 146, 98 L.Ed.2d 102 (1987).

[12] Nor does the imposition of strict, joint and several liability convert CERCLA into a bill of attainder or an *ex post facto* law. *United States v. Conservation Chemical Co.*, 619 F.Supp. 162, 214 (W.D. Mo.1985); *United States v. Tyson*, 25 Env't.Rep.Cas. (BNA) 1897 (E.D.Pa.1986) [available on WESTLAW, 1986 WL 9250]. The infliction of punishment, either legislatively or retrospectively, is a *sine qua non* of legislation that runs afoul of these constitutional prohibitions. *See Nixon v. Administrator of General Services*, 433 U.S. 425, 473–84, 97 S.Ct. 2777, 2805–11, 53 L.Ed.2d 867 (1977) (bill of attainder analysis); *Weaver v. Graham*, 450 U.S. 24, 28–30, 101 S.Ct. 960, 963–65, 67 L.Ed.2d 17 (1981) (*ex post facto* law analysis). CERCLA does not exact punishment. Rather it creates a reimbursement obligation on any person judicially determined responsible for the costs of remedying hazardous condi-

exceptional circumstances, we decline to review the separation of powers contention *de novo*.

31. *See, e.g., United States v. Northeastern Pharmaceutical & Chemical Co., Inc.*, 810 F.2d 726, 732–34 (8th Cir.1986), *cert. denied*, — U.S. —, 108 S.Ct. 146, 98 L.Ed.2d 102 (1987) (*NEPACCO*); *United States v. Hooker Chemicals & Plastics Corp.*, 680 F.Supp. 546 (W.D.N.Y.1988); *United States v. Shell Oil Co.*, 605 F.Supp. 1064, 1069–73 (D.Colo.1985). These decisions hold that CERCLA's legislative history and the past-tense language of section 107(a) evince congressional intent to apply CERCLA retroactively.

32. Similarly, in *Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, the Court stated:

> Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches.
>
> ....
>
> ... [Due process is satisfied] simply by showing that the retroactive application is itself justified by a rational legislative purpose.

467 U.S. 717, 729, 730, 104 S.Ct. 2709, 2717, 2718, 81 L.Ed.2d 601 (1984).

tions at a waste disposal facility. The restitution of cleanup costs was not intended to operate, nor does it operate in fact, as a criminal penalty or a punitive deterrent. *Cf. Tull v. United States,* 481 U.S. 412, 107 S.Ct. 1831, 1838, 95 L.Ed.2d 365 (1987) (distinguishing civil penalties under Clean Water Act from equitable remedy of restitution). Moreover, as this case amply demonstrates, Congress did not impose that obligation automatically on a legislatively defined class of persons.[33]

V.

[13] The United States contends on cross-appeal that the district court erred in denying its request for prejudgment interest on its response costs. At the time the court issued its decision, CERCLA contained no explicit provision for the award of prejudgment interest.[34] Since then, however, Congress has added the following language to section 107(a):

> The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26. 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.

42 U.S.C.A. 9607(a) (West Supp.1987). Because of this addition to the law, we look to the Supreme Court's decision in *Bradley v. Richmond School Board,* 416 U.S. 696, 94 S.Ct. 2006, 40 L.Ed.2d 476 (1974), for the principles controlling application of later-enacted amendments to previously accrued statutory liability. We conclude under *Bradley* that the case must be remanded for reconsideration of the interest question pursuant to the terms of amended statute.

In *Bradley,* the Supreme Court ruled that when Congress amends a law while a case is pending on direct appeal, the general rule is that the appellate court should apply the law as amended unless so doing would result in manifest injustice or would contravene statutory direction or legislative history to the contrary[35]. *Id.* at 711, 94 S.Ct. at 2016; *see Nilson Van & Storage Co. v. Marsh,* 755 F.2d 362, 365 (4th Cir.), *cert. denied,* 474 U.S. 818, 106 S.Ct. 65, 88 L.Ed.2d 53 (1985). Here, the language and legislative history of the 1986 amendment reveal no statutory direction or congressional intent to delay its application,[36] and the defendants have failed to

33. The existence of joint and several liability in cases of indivisible harm does not transform an otherwise constitutional obligation into one that exacts punishment. "Where there are opportunities for contribution ... as well as for joinder or impleader of responsible parties (Fed.R. Civ.P. Rules 14, 20 and 21), it can hardly be said that imposition of joint and several liability would be unconstitutional." *Conservation Chemical,* 619 F.Supp. at 214–15.

34. Although some courts had found implicit authority within section 107(e)(2), 42 U.S.C. § 9607(e)(2), for awarding interest, the district court denied the government's request, concluding that the defendants had not sought to delay the litigation and had not been recalcitrant, deceptive or unreasonable.

35. In *Bradley,* the district court granted an award of attorneys fees to civil rights plaintiffs, despite the absence of explicit statutory authorization. While the case was pending on appeal before this court, Congress authorized such fee awards in the Education Act Amendments of 1972. Although a majority of the en banc court reversed the award on other grounds, *Bradley v. School Board,* 472 F.2d 318 (4th Cir.1972) (en banc), Judge Winter in dissent stated that the new law should apply to cases pending on appeal. *Id.* at 335 (Winter, J. dissenting). In a unanimous reversal, the Supreme Court largely adopted the reasoning of Judge Winter's dissent.

36. The Third Circuit in *United States v. Union Gas Co.,* 832 F.2d 1343 (3rd Cir.1987), *cert. granted,* — U.S. ——, 108 S.Ct. 1219, 99 L.Ed.2d 420 (1988) recently applied another section of the 1986 Superfund Amendments to a case that was pending on appeal when the amendments were enacted. The court stated, "[t]o the extent that the added language serves to 'clarify' CERCLA, it amounts to a subsequent declaration of

demonstrate any "manifest injustice" that would arise from its immediate operation.

The generator defendants contend, however, that Congress' use of the word "shall" in the phrase "amounts recoverable ... shall include interest" does not of itself make *the award* of interest mandatory. Following fourth circuit precedent, we must agree with this contention as far as it goes. *See generally United Hospital Center, Inc. v. Richardson,* 757 F.2d 1445, 1453 (4th Cir.1985) ("in a proper case 'shall' may properly be construed as permissive"). We think, however, in light of CERCLA's restitutional purposes and Congress' intent to facilitate complete reimbursement, the amendment generally establishes interest as an element of recovery—"absent a convincing argument to the contrary." *Sterling Forest Associates v. Barnett-Range Corp.,* 840 F.2d 249, 252 (4th Cir.1988). Such an argument should be made in the first instance to the district court. Accordingly, we must remand the case for reconsideration of the interest question under the terms and purposes sought to be achieved by the amended statute.

VI.

In view of the above, the judgment of the district court as to the CERCLA liability of the site-owners and generator defendants is affirmed. The case is remanded, however, for reconsideration of the question of prejudgment interest.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

WIDENER, Circuit Judge, concurring and dissenting:

I concur in the majority opinion in all respects save its decision not to require the district court to treat the issue of allocation of costs of cleanup among the various defendants, at 172–173, and, as to that, I respectfully dissent. While it may be true that a subsequent suit for contribution may adequately apportion the damages among the defendants, I am of opinion that the district court, as a court of equity, is required to retain jurisdiction and answer that question now.

So far as I know, it is now and has been the general law without any variance that when a court of equity has jurisdiction it "will decide all matters in dispute and decree complete relief," e.g. *Alexander v. Hillman,* 296 U.S. 222, 242, 56 S.Ct. 204, 211, 80 L.Ed. 192 (1935), see *Pomeroy's Equity Jurisprudence,* 3rd Ed (1905) § 181, 231, and that a court of equity should dispose of a case "so as to end litigation, not to foster it; to diminish suits, not to multiply them." *Payne v. Hook,* 74 U.S. (7 Wall) 425, 432, 19 L.Ed. 260, 262 (1869). In *Payne,* a case which should control here, even if the statute does not, the Supreme Court held that once a court of equity had jurisdiction to determine liability for an estate administrator's misconduct, it also had the duty to determine the amount the sureties would pay in the event the administrator could not satisfy the judgment. In the face of the admitted liability of the sureties *in a separate action at law,* 19 L.Ed. at 262, the Court nevertheless required the lower court *in equity* to ascertain the liability of the sureties in the same suit in order that the matter, should the administrator be unable to pay, not be "... turned over to a court of law, to renew the litigation with his sureties." 19 L.Ed. at 262. Thus, almost the same situation pertained in *Payne* which is present here, but with opposite result.

I see great danger in postponing the ultimate apportioning of the damages to a later day. As an example, a small generator which deposited a few gallons of relatively innocuous waste liquid at a site is jointly and severally liable for the entire cost of cleanup under this decision. And with that I agree. If that generator were readily available and solvent, however, the government might well, and probably would, proceed against him first in collecting its judgment. The vagaries of and delays in his subsequent suit for contribu-

congressional intent that deserves great weight." *Id.* at 1350 (citing *Red Lion Broadcasting v. F.C.C.,* 395 U.S. 367, 380–82, 89 S.Ct. 1794, 1801–02, 23 L.Ed.2d 371 (1969)).

tion might result in needless financial disaster. I do not see this as a desired or even permissible result.

The statute involved, 42 U.S.C. 9613(f)(1), provides that "*[a]ny person* may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title during or following any civil action under section 9606 of this title or under section 9607(a) of this title." (Italics added) Thus, the statute plainly provides that discretion with respect to contribution is not in the district court to consider relief or not as the majority opinion holds; rather, it is in the generator to seek relief, for "any person" certainly includes the generators of the waste. So, since the matter was brought before the district court, that court had no discretion but to decide the question.[1] To repeat, the discretion is in the party to make the claim, not in the district court to defer decision. While I agree that the claims may be asserted in a separate action, if they are asserted in the main case they must be decided.

Section 9613(f)(1) is entirely in accord with *Payne*, and I think we make a mistake of no little consequence in deciding that the district court has the discretion either to decide the matter before it or to relegate the parties to a separate suit.

Not only do the statute and federal procedural law require the course I have suggested, I think that the interests of justice as well as judicial economy are best served by proceeding in that manner.

Joseph E. LIVELY, Plaintiff-Appellant,

v.

Otis R. BOWEN, Secretary, Department of Health and Human Services, Defendant-Appellee.

No. 87-3191.

United States Court of Appeals, Fourth Circuit.

Submitted May 19, 1988.

Decided Sept. 13, 1988.

Social security disability claimant sought award of attorney fees and expenses under the Equal Access to Justice Act. The United States District Court for the Southern District of West Virginia, Dennis R. Knapp, Senior District Judge, summarily concluded that Secretary of Health and Human Services was substantially justified in opposing claim, and claimant appealed. The Court of Appeals, Harrison L. Winter, Chief Judge, held that: (1) for purposes of award of attorney fees to claimant under the EAJA, Secretary's position in case in which Secretary had denied benefits based on decision of second administrative law judge inconsistent with first ALJ regarding claimant's abilities was not substantially justified, and (2) although Court of Appeals would ordinarily remand case in which district court had denied award under the EAJA but failed to reveal basis on which it decided government official's litigation position was substantially justified and require district court to disclose its reasoning, Court of Appeals perceived nothing in record to constitute substantial justification for the Secretary's position, and would accordingly direct that award be made.

Reversed and remanded.

1. Federal Courts ⟹830

Court of Appeals would review district court's finding that litigation position of

1. In the unlikely event that there was not sufficient evidence before the district court, it should simply have required more evidence to be taken, or should on remand should my view have prevailed.

that caused the explosion, making the fire difficult to extinguish.

In 1980, the Environmental Protection Agency (EPA) inspected the Bluff Road site. Its investigation revealed that the facility was filled well beyond its capacity with chemical waste. The number of drums and the reckless manner in which they were stacked precluded access to various areas in the site. Many of the drums observed were unlabeled, or their labels had become unreadable from exposure, rendering it impossible to identify their contents. The EPA concluded that the site posed "a major fire hazard."

Later that year, the United States filed suit under section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, against SCRDI, COCC, and Oscar Seidenberg. The complaint was filed before the December 11, 1980, effective date of CERCLA, and it sought only injunctive relief. Thereafter, the State of South Carolina intervened as a plaintiff in the pending action.

In the course of discovery, the governments identified a number of waste generators, including the generator defendants in this appeal, that had contracted with SCRDI for waste disposal. The governments notified the generators that they were potentially responsible for the costs of cleanup at Bluff Road under section 107(a) of the newly-enacted CERCLA. As a result of these contacts, the governments executed individual settlement agreements with twelve of the identified off-site producers. The generator defendants, however, declined to settle.

Using funds received from the settlements, the governments contracted with Triangle Resource Industries (TRI) to conduct a partial surface cleanup at the site. The contract required RAD Services, Inc., a subsidiary of TRI, to remove 75% of the drums found there and to keep a log of the removed drums. RAD completed its partial cleanup operation in October 1982. The log it prepared documented that it had removed containers and drums bearing the labels or markings of each of the three generator defendants.

The EPA reinspected the site after the first phase of the cleanup had been completed. The inspection revealed that closed drums and containers labeled with the insignia of each of the three generator defendants remained at the site. The EPA also collected samples of surface water, soil, and sediment from the site. Laboratory tests of the samples disclosed that several hazardous substances[4] contained in the waste the generator defendants had shipped to the site remained present at the site.[5]

Thereafter, South Carolina completed the remaining 25% of the surface cleanup. It used federal funds from the Hazardous Substances Response Trust Fund (Superfund), 42 U.S.C. § 9631, as well as state money from the South Carolina Hazardous Waste Contingency Fund, S.C.Code Ann. § 44-56-160, and in-kind contribution of other state funds to match the federal contribution.

In 1982, the governments filed an amended complaint, adding the three generator defendants and site-owner Harvey Hutchinson, and including claims under section 107(a) of CERCLA against all of the nonsettling defendants. The governments alleged that the generator defendants and site-owners were jointly and severally liable under section 107(a) for the costs ex-

4. The term "hazardous substance" is defined in section 101(14) of CERCLA, 42 U.S.C.A. § 9601(14) (West Supp.1987). The definition incorporates by reference the substances listed as hazardous or toxic under the Clean Water Act, 33 U.S.C.A. §§ 1317(a), 1321(b)(2)(a) (West 1986), the Clean Air Act, 42 U.S.C. § 7412(b), the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. § 6921 (West 1983 & Supp. 1987), and the Toxic Substances Control Act, 15 U.S.C. § 2606. Section 102(a) of CERCLA also authorizes EPA to list additional substances that "may present substantial danger to the public health or welfare or the environment." 42 U.S.C.A. § 9602(a) (West Supp.1987).

5. It is undisputed that hazardous substances of the sort contained in each of the generator defendants' waste materials were found at the site. These substances included 1,1,1-Trichloroethane, acetone, phenol, cresol (methyl phenol), chlorophenol, and 2,4-dichlorophenol.

tries, Inc. (the generator defendants),[1] appeal from the district court's entry of summary judgment holding them liable to the United States and the State of South Carolina (the governments) under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). 42 U.S.C.A. § 9607(a) (West Supp.1987). The court determined that the defendants were liable jointly and severally for $1,813,624 in response costs accrued from the partial removal of hazardous waste from a disposal facility located near Columbia, South Carolina. The court declined, however, to assess prejudgment interest against the defendants. We affirm the district court's liability holdings, but we vacate and remand for reconsideration its denial of prejudgment interest.

I.

In 1972, Seidenberg and Hutchinson leased a four-acre tract of land they owned to the Columbia Organic Chemical Company (COCC), a South Carolina chemical manufacturing corporation. The property, located along Bluff Road near Columbia, South Carolina, consisted of a small warehouse and surrounding areas. The lease was verbal, on a month-to-month basis, and according to the site-owners' deposition testimony, was executed for the sole purpose of allowing COCC to store raw materials and finished products in the warehouse. Seidenberg and Hutchinson received monthly lease payments of $200, which increased to $350 by 1980.

In the mid-1970s, COCC expanded its business to include the brokering and recycling of chemical waste generated by third parties. It used the Bluff Road site as a waste storage and disposal facility for its new operations. In 1976, COCC's principals incorporated South Carolina Recycling and Disposal Inc. (SCRDI), for the purpose of assuming COCC's waste-handling business, and the site-owners began accepting lease payments from SCRDI.

SCRDI contracted with numerous off-site waste producers for the transport, recycling, and disposal of chemical and other waste. Among these producers were agencies of the federal government and South Carolina,[2] and various private entities including the three generator defendants in this litigation. Although SCRDI operated other disposal sites, it deposited much of the waste it received at the Bluff Road facility. The waste stored at Bluff Road contained many chemical substances that federal law defines as "hazardous."

Between 1976 and 1980, SCRDI haphazardly deposited more than 7,000 fifty-five gallon drums of chemical waste on the four-acre Bluff Road site. It placed waste laden drums and containers wherever there was space, often without pallets to protect them from the damp ground. It stacked drums on top of one another without regard to the chemical compatibility of their contents. It maintained no documented safety procedures and kept no inventory of the stored chemicals. Over time many of the drums rusted, rotted, and otherwise deteriorated. Hazardous substances leaked from the decaying drums and oozed into the ground. The substances commingled with incompatible chemicals that had escaped from other containers, generating noxious fumes, fires, and explosions.

On October 26, 1977, a toxic cloud formed when chemicals leaking from rusted drums reacted with rainwater. Twelve responding firemen were hospitalized.[3] Again, on July 24, 1979, an explosion and fire resulted when chemicals stored in glass jars leaked onto drums containing incompatible substances. SCRDI'S site manager could not identify the substances

1. Originally a named generator defendant in this case, Aquair Corporation has entered into a settlement agreement with the plaintiffs.

2. The federal instrumentalities that contracted with SCRDI included the Environmental Protection Agency, the Army, the Air Force, and the Center for Disease Control. The South Carolina Department of Health and Environmental Control also contracted with SCRDI for waste disposal.

3. This incident sparked substantial publicity, and the site-owners concede that as of June 1977 they were aware of hazardous waste disposal activities taking place on their Bluff Road property.

RESEARCH GUIDE

Am Jur:

25 Am Jur 2d, Drugs § 32.5.

61A Am Jur 2d, Pollution Control § 289.

Law Review Articles:

International Regulation of Toxic Substances: A Discussion. 73 Am Soc Int L Proc 76, April, 1979.

Berger and Riskin, Economic and Technological Feasibility in Regulating Toxic Substances Under the Occupational Safety and Health Act. 7 Ecology L Q 285, 1978.

Doniger, Federal Regulation of Vinyl Chloride: A Short Course in the Law and Policy of Toxic Substances Control. 7 Ecology L Q 497, 1978.

Caruso, Protection of Trade Secrets Under the Toxic Substances Control Act. 7 Rutgers J Computers Tech & L 213, 1979.

Merrill, Regulation of Toxic Chemicals. 58 Tex L Rev 463, Feb., 1980.

INTERPRETIVE NOTES AND DECISIONS

There was no substantial evidence that EPA regulations exempting certain totally enclosed uses of polychlorinated biphenyls (PCBs) would insure that any exposure of human beings or environment to PCBs would be insignificant, pursuant to 15 USCS § 2605(e)(2)(C), where, under current regulations, agency had no idea which PCB uses were intact or nonleaking, nor did agency have any procedures for inspection or even self-reporting of leaks or other forms of contamination. Environmental Defense Fund, Inc. v Environmental Protection Agency (1980) 205 App DC 139, 636 F2d 1267, 10 ELR 20972.

Mandate of 15 USCS §§ 2605(e) requires EPA to regulate all levels polychlorinated biphenyl (PCB); there was no substantial evidence to support agency's decision to establish regulatory cutoff of permissible concentrations of PCBs at 50 ppm, § 2605(e) being intended to regulate point sources of contamination, where agency found that any release of PCBs into environment would have adverse effects, and agency's arbitrary concentration limit, aimed at exempting ambient levels of PCBs, would still permit some industrial source of contamination. Environmental Defense Fund, Inc. v Environmental Protection Agency (1980) 205 App DC 139, 636 F2d 1267, 10 ELR 20972.

EPA properly applied 15 USCS § 2605(c)(1) criteria in making unreasonable risk determinations under 15 USCS § 2605(e)(2)(B), regarding regulations governing use of polychlorinated biphenyls (PCBs), where although scientific knowledge of risk was incomplete, agency set forth specific policy considerations explaining final regulations. Environmental Defense Fund, Inc. v Environmental Protection Agency (1980) 205 App DC 139, 636 F2d 1267, 10 ELR 20972.

Toxic Substances Control Act (15 USCS §§ 2601 et seq.) does not preclude EPA from using § 2605(c)(1) criteria in making "unreasonable risk determinations" under § 2605(e). Environmental Defense Fund, Inc. v Environmental Protection Agency (1980) 205 App DC 139, 636 F2d 1267, 10 ELR 20972.

Toxic Substances Control Act (15 USCS § 2601 et seq.) vests exclusive jurisdiction over any attempt to secure pre-enforcement judicial review of rule promulgated under 15 USCS § 2605 in Courts of Appeals, and District Courts thereby lack jurisdiction over such subject matter. Dow Chemical Co. v Costle (1980, DC Del) 484 F Supp 101.

§ 2606. Imminent hazards

(a) Actions authorized and required. (1) The Administrator may commence a civil action in an appropriate district court of the United States—

(A) for seizure of an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture,

(B) for relief (as authorized by subsection (b)) against any person who manufactures, processes, distributes in commerce, or uses, or disposes of, an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture, or

(C) for both such seizure and relief.

A civil action may be commenced under this paragraph notwithstanding the existence of a rule under section 4, 5, or 6 [15 USCS §§ 2603-2605] or an order under section 5 [15 USCS § 2604], and notwithstanding the pendency of any administrative or judicial proceeding under any provision of this Act [15 USCS §§ 2601 et seq.].

(2) If the Administrator has not made a rule under section 6(a) [15 USCS § 2605(a)] immediately effective (as authorized by subsection 6(d)(2)(A)(i) [15 USCS § 2605(d)(2)(A)(i)]) with respect to an imminently hazardous chemical substance or mixture, the Administrator shall commence in a district court of the United States with respect to such substance or mixture or article containing such substance or mixture a civil action described in subparagraph (A), (B), or (C) of paragraph (1).

(b) **Relief authorized.** (1) The district court of the United States in which an action under subsection (a) is brought shall have jurisdiction to grant such temporary or permanent relief as may be necessary to protect health or the environment from the unreasonable risk associated with the chemical substance, mixture, or article involved in such action.

(2) In the case of an action under subsection (a) brought against a person who manufactures, processes, or distributes in commerce a chemical substance or mixture or an article containing a chemical substance or mixture, the relief authorized by paragraph (1) may include the issuance of a mandatory order requiring (A) in the case of purchasers of such substance, mixture, or article known to the defendant, notification to such purchasers of the risk associated with it; (B) public notice of such risk; (C) recall; (D) the replacement or repurchase of such substance, mixture, or article; or (E) any combination of the actions described in the preceding clauses.

(3) In the case of an action under subsection (a) against a chemical substance, mixture, or article, such substance, mixture, or article may be proceeded against by process of libel for its seizure and condemnation. Proceedings in such an action shall conform as nearly as possible to proceedings in rem in admiralty.

(c) **Venue and consolidation.** (1)(A) An action under subsection (a) against a person who manufactures, processes, or distributes a chemical substance or mixture or an article containing a chemical substance or mixture may be brought in the United States District Court for the District of Columbia or for any judicial district in which any of the defendants is found, resides, or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. An action under subsection

(a) against a chemical substance, mixture, or article may be brought in any United States district court within the jurisdiction of which the substance, mixture, or article is found.

(B) In determining the judicial district in which an action may be brought under subsection (a) in instances in which such action may be brought in more than one judicial district, the Administrator shall take into account the convenience of the parties.

(C) Subpeonas [Subpoenas] requiring attendance of witnesses in an action brought under subsection (a) may be served in any judicial district.

(2) Whenever proceedings under subsection (a) involving identical chemical substances, mixtures, or articles are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all parties in interest.

(d) Action under 15 USCS § 2605. Where appropriate, concurrently with the filing of an action under subsection (a) or as soon thereafter as may be practicable, the Administrator shall initiate a proceeding for the promulgation of a rule under section 6(a) [15 USCS 2605(a)].

(e) Representation. Notwithstanding any other provision of law, in any action under subsection (a), the Administrator may direct attorneys of the Environmental Protection Agency to appear and represent the Administrator in such an action.

(f) Definition. For the purposes of subsection (a), the term "imminently hazardous chemical substance or mixture" means a chemical substance or mixture which presents an imminent and unreasonable risk of serious or widespread injury to health or the environment. Such a risk to health or the environment shall be considered imminent if it is shown that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture, or that any combination of such activities, is likely to result in such injury to health or the environment before a final rule under section 6 [15 USCS § 2605] can protect against such risk.

(Oct. 11, 1976, P. L. 94-469, § 7, 90 Stat. 2026.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed word "Subpoenas" is inserted in subsec. (c)(1)(C) to reflect the probable intent of Congress.

Effective date of section:

Section 31 of Act Oct. 11, 1976, which appears as 15 USCS § 2601 note, provides that this section shall take effect on Jan. 1, 1977.

CROSS REFERENCES

This section is referred to in 15 USCS §§ 2603–2605, 2607, 2608, 2611, 2612, 2614, 2619; 42 USCS §§ 9601, 9606.

numbering, or as provided for by international agreement to which the United States is a party.

(b) Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous substances; study of higher standard of care incentives and report to Congress; liability; penalties; civil actions: penalty limitations, separate offenses, jurisdiction, mitigation of damages and costs, recovery of removal costs and alternative remedies. (1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted.

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to,

Regulation providing for grant of variance from 1977 effluent limitations applicable to discharge of heat from steam electric generating plant, which regulation provides that only technical and engineering factors, exclusive of cost, may be considered in granting or denying variance, is unduly restrictive and would be set aside; 1977 standards and subsequent new source limitations were not intended to be applied any flexibly than 1983 requirements thus, upon reconsideration, EPA should come forward with meaningful variance clause applicable to existing as well as new sources, taking into consideration at least statutory factors set out in 33 USCS §§ 1311(c), 1314(b)(1)(B) and 1316(b)(1)(B). Appalachian Power Co. v Train (1976, CA4) 545 F2d 1351.

14. Grace period

It is not clear whether Congress intended to equate "effluent limitations" as used in 33 USCS § 1311 and defined in 33 USCS § 1362, with "standard of performance" as defined in 33 USCS § 1316, nor is it clear intent of Congress with reference to applicability of grace period to plants construction of which began after passage of Act in 1972 and before promulgation of regulations in 1974, however, except for such situations as are later determined to be within 33 USCS § 1316 grace period, plants which go on line between passage of Act and 1983 are subject to 1983 limitations. E. I. Du Pont de Nemours & Co. v Train (1976, CA4) 541 F2d 1018, affd in part and revd in part on other grounds 430 US 112, 51 L Ed 2d 204, 97 S Ct 965.

It is inferable from Congress' special treatment of new sources that it determined to afford protection of limited kind to new sources, under 33 USCS § 1316 provisions permitting standards of performance for new point sources to be revised from time to time, but providing more stringent standard of performance may not be imposed on individual source for 10 years after completion of construction or until facility is fully depreciated or amortized, but not to extend same protection to existing sources or to restrict effectiveness of 33 USCS § 1317 standards even upon new sources. Inland Steel Co. v Environmental Protection Agency (1978, CA7) 574 F2d 367.

33 USCS § 1316 provision providing that new sources meeting all applicable standards of performance at time of construction do not have to meet any more stringent standard of performance during specific period of time does not shield qualifying sources from more stringent performance standards set by state which is assumed administration of National Pollutant Discharge Elimination System program under 33 USCS § 1342. USEPA GCO 76-22.

15. Violations by new source

Variances for individual plants are not permitted under 33 USCS § 1316, which authorizes Administrator of Environmental Protection Agency to promulgate regulations establishing standards for control of discharge of pollutants by new sources of water polluting discharges. E. I. Du Pont de Nemours & Co. v Train (1977) 430 US 112, 51 L Ed 2d 204, 97 S Ct 965.

Since regulations entitled "Ocean Dumping" were explicitly issued pursuant to 33 USCS § 1311 et seq. and 33 USCS § 1343, and not under 33 USCS § 1316(e) allegations that regulations have been violated do not allege violation of any portion of § 1316 so as to fall within 33 USCS § 1365's waiver of 60-day notice requirement. Save Our Sound Fisheries Asso. v Callaway (1977, DC RI) 429 F Supp 1136.

§ 1317. Toxic and pretreatment effluent standards

(a) Toxic pollutant list; revision; hearing; promulgation of standards; effective date; consultation. (1) On and after the date of enactment of the Clean Water Act of 1977 [enacted Dec. 27, 1977], the list of toxic pollutants or combination of pollutants subject to this Act shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth day after the date of enactment of the Clean Water Act of 1977 [enacted Dec. 27, 1977], that list. From time to time thereafter, the Administrator may revise such list and the Administrator is authorized to add to or remove from such list any pollutant. The Administrator in publishing any revised list, including the addition or removal of any pollutant from such list, shall take into account toxicity

of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms. A determination of the Administrator under this paragraph shall be final except that if, on judicial review, such determination was based on arbitrary and capricious action of the Administrator, the Administrator shall make a redetermination.

(2) Each toxic pollutant listed in accordance with paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 301(b)(2)(A) and 304(b)(2) of this Act [33 USCS §§ 1311(b)(2)(A), 1314(b)(2)]. The Administrator, in his discretion, may publish in the Federal Register a proposed effluent standard (which may include a prohibition) establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, shall be applicable to such category or class only if such standard imposes more stringent requirements. Such published effluent standard (or prohibition) shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority. The Administrator shall allow a period of not less than sixty days following publication of any such proposed effluent standard (or prohibition) for written comment by interested persons on such proposed standard. In addition, if within thirty days of publication of any such proposed effluent standard (or prohibition) any interested person so requests, the Administrator shall hold a public hearing in connection therewith. Such a public hearing shall provide an opportunity for oral and written presentations, such cross-examination as the Administrator determines is appropriate on disputed issues of material fact, and the transcription of a verbatim record which shall be available to the public. After consideration of such comments and any information and material presented at any public hearing held on such proposed standard or prohibition, the Administrator shall promulgate such standard (or prohibition) with such modification as the Administrator finds are justified. Such promulgation by the Administrator shall be made within two hundred and seventy days after publication of proposed standard (or prohibition). Such standard (or prohibition) shall be final except that if, on judicial review, such standard was not based on substantial evidence, the Administrator shall promulgate a revised standard. Effluent limitations shall be established in accordance with sections 301(b)(2)(A) and 304(b)(2) [33 USCS §§ 1311(b)(2)(A), 1314(b)(2)] for every toxic pollutant referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives as soon as

practicable after the date of enactment of the Clean Water Act of 1977 [enacted Dec. 27, 1977], but no later than July 1, 1980. Such effluent limitations or effluent standards (or prohibitions) shall be established for every other toxic pollutant listed under paragraph (1) of this subsection as soon as practicable after it is so listed.

(3) Each such effluent standard (or prohibition) shall be reviewed and, if appropriate, revised at least every three years.

(4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.

(5) When proposing or promulgating any effluent standard (or prohibition) under this section, the Administrator shall designate the category or categories of sources to which the effluent standard (or prohibition) shall apply. Any disposal of dredged material may be included in such a category of sources after consultation with the Secretary of the Army.

(6) Any effluent standard (or prohibition) established pursuant to this section shall take effect on such date or dates as specified in the order promulgating such standard, but in no case, more than one year from the date of such promulgation. If the Administrator determines that compliance within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for such category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

(7) Prior to publishing any regulations pursuant to this section the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, States, independent experts, and Federal departments and agencies.

(b) Pretreatment standards; hearing; promulgation; compliance period; revision; application to State and local laws. (1) The Administrator shall, within one hundred and eighty days after the date of enactment of this title [enacted Oct. 18, 1972] and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 212 of this Act [33 USCS § 1292]) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 212 of this Act [33 USCS § 1292]) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incom-

agencies in accordance with subtitle D of this Act [42 USCS §§ 6941 et seq.] other than section 4008(a)(2) or 4009 [42 USCS § 6948(a)(2) or 6949].
(Oct. 20, 1965, P. L. 89-272, Title II, Subtitle B, § 2007 [2006], as added Oct. 21, 1976, P. L. 94-580, § 2, 90 Stat. 2805; Oct. 15, 1980, P. L. 96-463, § 4(a), 94 Stat. 2055; Oct. 21, 1980, P. L. 96-482, §§ 6, 31(a), 94 Stat. 2336, 2352.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:
The bracketed comma is inserted in subsec. (a) to reflect the probable intent of Congress.

Amendments:
1980. Act Oct. 21, 1980, in subsec. (a), deleted "and" following "1978", and inserted "$70,000,000 for the fiscal year ending September 30, 1980, $80,000,000 for the fiscal year ending September 30, 1981, and $80,000,000 for the fiscal year ending September 30, 1982"; in subsec. (b), inserted ", or $5,000,000 per fiscal years, whichever is less,"; and added subsec. (d).

Redesignation:
This section, formerly § 2006 of Act Oct. 20, 1965, P. L. 89-272, as added Oct. 21, 1976, P. L. 94-580, § 2, 90 Stat. 2803, was redesignated § 2007 of such Act by Act Oct. 15, 1980, P. L. 96-463, § 4(a), 94 Stat. 2055.

Transfer of functions:
For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under 42 USCS §§ 6901 et seq. to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see 42 USCS § 6903 note.

HAZARDOUS WASTE MANAGEMENT

CROSS REFERENCES

This subchapter is referred to in 42 USCS §§ 2022, 6916, 6948, 6972.

§ 6921. Identification and listing of hazardous waste

(a) Criteria for identification or listing. Not later than eighteen months after the date of the enactment of this Act [enacted Oct. 21, 1976], the Administrator shall, after notice and opportunity for public hearing, and after consultation with appropriate Federal and State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subtitle [42 USCS §§ 6921 et seq.], taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and

other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate.

(b) **Identification and listing.** (1) Not later than eighteen months after the date of enactment of this section [enacted Oct. 21, 1976], and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 1004(5) [42 USCS § 6903(5)]), which shall be subject to the provisions of this subtitle [42 USCS §§ 6921 et seq.]. Such regulations shall be based on the criteria promulgated under subsection (a) and shall be revised from time to time thereafter as may be appropriate.

(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy shall be subject only to existing State or Federal regulatory programs in lieu of subtitle C [42 USCS §§ 6921 et seq.] until at least 24 months after the date of enactment of the Solid Waste Disposal Act Amendments of 1980 [enacted Oct. 21, 1980] and after promulgation of the regulations in accordance with subparagraphs (B) and (C) of this paragraph. It is the sense of the Congress that such State or Federal programs should include, for waste disposal sites which are to be closed, provisions requiring at least the following:

(i) The identification through surveying, platting, or other measures, together with recordation of such information on the public record, so as to assure that the location where such wastes are disposed of can be located in the future; except however, that no such surveying, platting, or other measure identifying the location of a disposal site for drilling fluids and associated wastes shall be required if the distance from the disposal site to the surveyed or platted location to the associated well is less than two hundred lineal feet; and

(ii) A chemical and physical analysis of a produced water and a composition of a drilling fluid suspected to contain a hazardous material, with such information to be acquired prior to closure and to be placed on the public record.

(B) Not later than six months after completion and submission of the study required by section 8002(m) of this Act [42 USCS § 6982(m)], the Administrator shall, after public hearings and opportunity for comment, determine either to promulgate regulations under this subtitle [42 USCS §§ 6921 et seq.] for drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy or that such regulations are unwarranted. The Administrator shall publish his decision in the Federal Register accompanied by an explanation and justification of the reasons for it. In making the decision under this

paragraph, the Administrator shall utilize the information developed or accumulated pursuant to the study required under section 8002(m) [42 USCS § 6982(m)].

(C) The Administrator shall transmit his decision, along with any regulations, if necessary, to both Houses of Congress. Such regulations shall take effect only when authorized by Act of Congress.

(3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, each waste listed below shall, except as provided in subparagraph (B) of this paragraph, be subject only to regulation under other applicable provisions of Federal or State law in lieu of this subtitle [42 USCS §§ 6921 et seq.] until at least six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), *(o)*, or (p) of section 8002 of this Act [42 USCS § 6982(f), (n), *(o)*, or (p)] and after promulgation of regulations in accordance with subparagraph (C) of this paragraph:

(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(ii) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.

(iii) Cement kiln dust waste.

(B)(i) Owners and operators of disposal sites for wastes listed in subparagraph (A) may be required by the Administrator, through regulations prescribed under authority of section 2002 of this Act [42 USCS § 6912]—

(I) as to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting, or other measures, together with recordation of such information on the public record, to assure that the locations where such wastes are disposed of are known and can be located in the future, and

(II) to provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record.

(ii)(I) In conducting any study under subsection (f), (n), (o), or (p), of section 8002 of this Act [42 USCS § 6982(f), (n), *(o)*, or (p)], any officer, employee, or authorized representative of the Environmental Protection Agency, duly designated by the Administrator, is authorized, at reasonable times and as reasonably necessary for the purposes of such study, to enter any establishment where any waste subject to such study is generated, stored, treated, disposed of, or transported from; to inspect, take samples, and conduct monitoring and testing; and to have access to and copy records relating to such waste. Each such inspection

shall be commenced and completed with reasonable promptness. If the officer, employee, or authorized representative obtains any samples prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, or monitoring and testing performed, a copy of the results shall be furnished promptly to the owner, operator, or agent in charge.

(II) Any records, reports, or information obtained from any person under subclause (I) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, to which the Administrator has access under this subparagraph if made public, would divulge information entitled to protection under section 1905 of title 18 of the United States Code [18 USCS § 1905], the Administrator shall consider such information or particular portion thereof 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 [42 USCS §§ 6901 et seq.]. Any person not subject to the provisions of section 1905 of title 18 of the United States Code [18 USCS § 1905] who knowingly and willfully divulges or discloses any information entitled to protection under this subparagraph shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(iii) The Administrator may prescribe regulations, under the authority of this Act [42 USCS §§ 6901 et seq.], to prevent radiation exposure which presents an unreasonable risk to human health from the use in construction or land reclamation (with or without revegetation) of (I) solid waste from the extraction, beneficiation, and processing of phosphate rock or (II) overburden from the mining of uranium ore.

(iv) Whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subparagraph, the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification, the Administrator may issue an order requiring compliance within a specified time period or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(C) Not later than six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p), of section 8002 of this Act [42 USCS § 6982(f), (n), *(o)*, or (p)], the Administrator shall, after public hearings and opportunity for comment, either determine to promulgate regulations under this subtitle [42 USCS §§ 6921 et seq.] for each waste listed in subparagraph (A) of this paragraph or determine that such regulations are unwarranted. The Administrator shall publish his determination, which shall be based on information developed or accumulated pursuant to such study, public hearings, and comment, in the Federal Register accompanied by an explanation and justification of the reasons for it.

(c) Petition by State Governor. At any time after the date eighteen months after the enactment of this title [enacted Oct. 21, 1976], the Governor of any State may petition the Administrator to identify or list a material as a hazardous waste. The Administrator shall act upon such petition within ninety days following his receipt thereof and shall notify the Governor of such action. If the Administrator denies such petition, because of financial considerations, in providing such notice to the Governor he shall include a statement concerning such considerations.

(Oct. 20, 1965, P. L. 89-272, Title II, Subtitle C, § 3001, as added Oct. 21, 1976, P. L. 94-580, § 2, 90 Stat. 2806; Oct. 21, 1980, P. L. 96-482, § 7, 94 Stat. 2336.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1980. Act Oct. 21, 1980, in subsec. (b), inserted "(1)", and added paras. (2) and (3).

Transfer of functions:

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under 42 USCS §§ 6901 et seq. to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see 42 USCS § 6903 note.

CODE OF FEDERAL REGULATIONS

General grant regulations and procedures, 40 CFR Part 30.
Subagreements, 40 CFR Part 33.
Research and demonstration grants, 40 CFR Part 40.

CROSS REFERENCES

This section is referred to in 42 USCS § 6930.

RESEARCH GUIDE

Am Jur:

61A Am Jur 2d, Pollution Control §§ 3, 247, 248, 253.

ARY LAWS AND DIRECTIVES

·).

DERAL REGULATIONS

ARCH GUIDE

tion Panels

RCH GUIDE

ed objectives for the activities and programs
USCS §§ 6901 et seq.];

le V, § 502(b), 98 Stat. 3276.)

LAWS AND DIRECTIVES

uted "detailed" for "detail".

zed to be appropriated to the Administrator for
this Act [42 USCS §§ 6901 et seq.], $35,000,000
1977, $38,000,000 for the fiscal year ending
year ending September 30, 1979[,] $70,000,000
1980, $80,000,000 for the fiscal year ending
l year ending September 30, 1982, $70,000,000
985, $80,000,000 for the fiscal year ending
iscal year ending September 30, 1987, and

ed to be appropriated to the Administrator
) for the fiscal year 1986, $2,529,000 for the
ar 1988 to be used—
the Environmental Protection Agency autho-
nal investigations (to investigate, or supervise
criminal penalty is provided) under this Act

rs or employees.

thorized to be appropriated to the Adminis-
rovisions of subtitle I [42 USCS §§ 6991 et
storage tanks), $10,000,000 for each of the

25,000,000 for each of the fiscal years 1985
he States for purposes of assisting the States
approved State underground storage tank
rograms under subtitle I [42 USCS §§ 6991

i), 98 Stat. 3222, 3223.)

WS AND DIRECTIVES

d "$80,000,000 for the fiscal year ending

ted by P.L.'s 100-202 & 203]

September 30, 1982, $70,000,000 for the fiscal year ending September 30, 1985, $80,000,000 for the fiscal year ending September 30, 1986, $80,000,000 for the fiscal year ending September 30, 1987, and $80,000,000 for the fiscal year 1988" for "and $80,000,000 for the fiscal year ending September 30, 1982"; and added subsecs. (e) and (f).

§ 6917. Office of Ombudsman

(a) **Establishment; Functions.** The Administrator shall establish an Office of Ombudsman, to be directed by an Ombudsman. It shall be the function of the Office of Ombudsman to receive individual complaints, grievances, requests for information submitted by any person with respect to any program or requirement under this Act [42 USCS §§ 6901 et seq.].

(b) **Authority to render assistance.** The Ombudsman shall render assistance with respect to the complaints, grievances, and requests submitted to the Office of Ombudsman, and shall make appropriate recommendations to the Administrator.

(c) **Effect on procedures for grievances, appeals, or administrative matters.** The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of this Act [42 USCS §§ 6901 et seq.], any other provision of law, or any Federal regulation.

(d) **Termination.** The Office of the Ombudsman shall cease to exist 4 years after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 [enacted Nov. 8, 1984].

(Oct. 20, 1965, P. L. 89-272, Title II, Subtitle B, § 2008, as added Nov. 8, 1984, P. L. 98-616, Title I, § 103(a), 98 Stat. 3225.)

§ 6921. Identification and listing of hazardous waste

(a) [Unchanged]

(b) **Identification and listing.** (1) Not later than eighteen months after the date of enactment of this section [enacted Oct. 21, 1976], and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 1004(5) [42 USCS § 6903(5)]), which shall be subject to the provisions of this subtitle [42 USCS §§ 6921 et seq.]. Such regulations shall be based on the criteria promulgated under subsection (a) and shall be revised from time to time thereafter as may be appropriate. The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to the provisions of this subtitle [42 USCS §§ 6921 et seq.] solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratagens) at levels in excess of levels which endanger human health.

(2) [Unchanged]

(c) [Unchanged]

(d) **Small quantity generator waste.** (1) By March 31, 1986, the Administrator shall promulgate standards under sections 3002, 3003, and 3004 [42 USCS §§ 6922-6924] for hazardous waste generated by a generator in a total quantity of hazardous waste greater than one hundred kilograms but less than one thousand kilograms during a calendar month.

(2) The standards referred to in paragraph (1), including standards applicable to the legitimate use, reuse, recycling, and reclamation of such wastes, may vary from the standards applicable to hazardous waste generated by larger quantity generators, but such standards shall be sufficient to protect human health and the environment.

(3) Not later than two hundred and seventy days after the enactment of the Hazardous and Solid Waste Amendments of 1984 [enacted Nov. 8, 1984] any hazardous waste which is part of a total quantity generated by a generator generating greater than one hundred kilograms but less than one thousand kilograms during one calendar month and which is shipped off the premises on which such waste is generated shall be accompanied by a copy of the Environmental Protection Agency Uniform Hazardous Waste Manifest form signed by the generator. This form shall contain the following information:

(A) the name and address of the generator of the waste;

(B) the United States Department of Transportation description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA), if applicable;

(C) the number and type of containers;

(D) the quantity of waste being transported; and

(E) the name and address of the facility designated to receive the waste.

If subparagraph (B) is not applicable, in lieu of the description referred to in such subparagraph (B), the form shall contain the Environmental Protection Agency identifica-

tion number, or a generic description of the waste, or a description of the waste by hazardous waste characteristic. Additional requirements related to the manifest form shall apply only if determined necessary by the Administrator to protect human health and the environment.

(4) The Administrator's responsibility under this subtitle [42 USCS §§ 6921 et seq.] to protect human health and the environment may require the promulgation of standards under this subtitle [42 USCS §§ 6921 et seq.] for hazardous wastes which are generated by any generator who does not generate more than one hundred kilograms of hazardous waste in a calendar month.

(5) Until the effective date of standards required to be promulgated under paragraph (1), any hazardous waste identified or listed under section 3001 [this section] generated by any generator during any calendar month in a total quantity greater than one hundred kilograms but less than one thousand kilograms, which is not treated, stored, or disposed of at a hazardous waste treatment, storage, or disposal facility with a permit under section 3005 [42 USCS § 6925], shall be disposed of only in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) Standards promulgated as provided in paragraph (1) shall, at a minimum, require that all treatment, storage, or disposal of hazardous wastes generated by generators referred to in paragraph (1) shall occur at a facility with interim status or a permit under this subtitle [42 USCS §§ 6921 et seq.], except that onsite storage of hazardous waste generated by a generator generating a total quantity of hazardous waste greater than one hundred kilograms, but less than one thousand kilograms during a calendar month, may occur without the requirement of a permit for up to one hundred and eighty days. Such onsite storage may occur without the requirement of a permit for not more than six thousand kilograms for up to two hundred and seventy days if such generator must ship or haul such waste over two hundred miles.

(7)(A) Nothing in this subsection shall be construed to affect or impair the validity of regulations promulgated by the Secretary of Transportation pursuant to the Hazardous Materials Transportation Act.

(B) Nothing in this subsection shall be construed to affect, modify, or render invalid any requirements in regulations promulgated prior to January 1, 1983 applicable to any acutely hazardous waste identified or listed under section 3001 [this section] which is generated by any generator during any calendar month in a total quantity less than one thousand kilograms.

(8) Effective March 31, 1986, unless the Administrator promulgates standards as provided in paragraph (1) of this subsection prior to such date, h[illegible]s waste generated by any generator in a total quantity greater than one hun[illegible]ams but less than one thousand kilograms during a calendar month sha[illegible] the following requirements until the standards referred to in paragr[illegible] this subsection have become effective:

(A) the notice requirements of paragrap[illegible]is subsection shall apply and in addition, the information provided in th[illegible]ll include the name of the waste transporters and the name and address of [illegible] designated to receive the waste;

(B) except in the case of the onsite st[illegible]ferred to in paragraph (6) of this subsection, the treatment, storage, or dis[illegible] such waste shall occur at a facility with interim status or a permit under this [illegible] [42 USCS §§ 6921 et seq.];

(C) generators of such waste shall file [illegible]st exception reports as required of generators producing greater amounts of ha[illegible]us waste per month except that such reports shall be filed by January 31, for any [illegible]e shipment occurring in the last half of the preceding calendar year, and by July [illegible] for any waste shipment occurring in the first half of the calendar year; and

(D) generators of such waste shall retain for th[illegible]ee years a copy of the manifest signed by the designated facility that has received the waste. Nothing in this paragraph shall be construed as a determination of the standards appropriate under paragraph (1).

(9) The last sentence of section 3010(b) [42 USCS §§ 6930(b)] shall not apply to regulations promulgated under this subsection.

(e) **Specified wastes.** (1) Not later than 6 months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 [enacted Nov. 8, 1984], the Administrator shall, where appropriate, list under subsection (b)(1), additional wastes containing chlorinated dioxins or chlorinated-dibenzofurans. Not later than one year after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 [enacted Nov. 8, 1984], the Administrator shall, where appropriate, list under subsection (b)(1) wastes containing remaining halogenated dioxins and halogenated-dibenzofurans.

(2) Not later than fifteen months after the date of enactment of the Hazardous and Solid

of the waste, or a description of the waste by
al requirements related to the manifest form shall
e Administrator to protect human health and the

nder this subtitle [42 USCS §§ 6921 et seq.] to
ient may require the promulgation of standards
eq.] for hazardous wastes which are generated by
iore than one hundred kilograms of hazardous

equired to be promulgated under paragraph (1),
ider section 3001 [this section] generated by any
n a total quantity greater than one hundred
grams, which is not treated, stored, or disposed
or disposal facility with a permit under section
of only in a facility which is permitted, licensed,
al or industrial solid waste.
paragraph (1) shall, at a minimum, require that
lous wastes generated by generators referred to
th interim status or a permit under this subtitle
site storage of hazardous waste generated by a
hazardous waste greater than one hundred
ograms during a calendar month, may occur
to one hundred and eighty days. Such onsite
t of a permit for not more than six thousand
nty days if such generator must ship or haul

construed to affect or impair the validity of
of Transportation pursuant to the Hazardous

construed to affect, modify, or render invalid
ted prior to January 1, 1983 applicable to any
ed under section 3001 [this section] which is
endar month in a total quantity less than one

inistrator promulgates standards as provided
uch date, hazardous waste generated by any
one hundred kilograms but less than one
h shall be subject to the following require-
agraph (1) of this subsection have become

(3) of this subsection shall apply and in
form shall include the name of the waste
he facility designated to receive the waste;
rage referred to in paragraph (6) of this
osal of such waste shall occur at a facility
ubtitle [42 USCS §§ 6921 et seq.];
nanifest exception reports as required of
izardous waste per month except that such
y waste shipment occurring in the last half
y 31, for any waste shipment occurring in

r three years a copy of the manifest signed
the waste. Nothing in this paragraph shall
ırds appropriate under paragraph (1).
2 USCS §§ 6930(b)] shall not apply to

ths after the date of enactment of the
34 [enacted Nov. 8, 1984], the Administra-
tion (b)(1), additional wastes containing
. Not later than one year after the date of
Amendments of 1984 [enacted Nov. 8,
iate, list under subsection (b)(1) wastes
logenated-dibenzofurans.
of enactment of the Hazardous and Solid

Waste Amendments of 1984 [enacted Nov. 8, 1984], the Administrator shall make a determination of whether or not to list under subsection (b)(1) the following wastes: Chlorinated Aliphatics, Dioxin, Dimethyl Hydrazine, TDI (toluene diisocyanate), Carbamates, Bromacil, Linuron, Organo-bromines, solvents, refining wastes, chlorinated aromatics, dyes and pigments, inorganic chemical industry wastes, lithium batteries, coke byproducts, paint production wastes, and coal slurry pipeline effluent.

(f) **Delisting procedures.** (1) When evaluating a petition to exclude a waste generated at a particular facility from listing under this section, the Administrator shall consider factors (including additional constituents) other than those for which the waste was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. The Administrator shall provide notice and opportunity for comment on these additional factors before granting or denying such petition.

(2)(A) To the maximum extent practicable the Administrator shall publish in the Federal Register a proposal to grant or deny a petition referred to in paragraph (1) within twelve months after receiving a complete application to exclude a waste generated at a particular facility from being regulated as a hazardous waste and shall grant or deny such a petition within twenty-four months after receiving a complete application.

(B) The temporary granting of such a petition prior to the enactment of the Hazardous and Solid Waste Amendments of 1984 [enacted Nov. 8, 1984] without the opportunity for public comment and the full consideration of such comments shall not continue for more than twenty-four months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 [enacted Nov. 8, 1984]. If a final decision to grant or deny such a petition has not been promulgated after notice and opportunity for public comment within the time limit prescribed by the preceding sentence, any such temporary granting of such petition shall cease to be in effect.

(g) **EP Toxicity.** Not later than twenty-eight months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 [enacted Nov. 8, 1984] the Administrator shall examine the deficiencies of the extraction procedure toxicity characteristic as a predictor of the leaching potential of wastes and make changes in the extraction procedure toxicity characteristic, including changes in the leaching media, as are necessary to insure that it accurately predicts the leaching potential of wastes which pose a threat to human health and the environment when mismanaged.

(h) **Additional characteristics.** Not later than two years after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 [enacted Nov. 8, 1984], the Administrator shall promulgate regulations under this section identifying additional characteristics of hazardous waste, including measures or indicators of toxicity.

(i) **Clarification of household waste exclusion.** A resource recovery facility recovering energy from the mass burning of municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle [42 USCS §§ 6921 et seq.], if—

(1) such facility—

(A) receives and burns only—

(i) household waste (from single and multiple dwellings, hotels, motels, and other residential sources), and

(ii) solid waste from commercial or industrial sources that does not contain hazardous waste identified or listed under this section, and

(B) does not accept hazardous wastes identified or listed under this section, and

(2) the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(As amended Nov. 8, 1984, P. L. 98-616, Title II, Subtitle C, §§ 221(a), 222, 223 98 Stat. 3249, 3251, 3252.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"The Hazardous Materials Transportation Act", referred to in this section, is Act Jan. 3, 1975, P. L. 93-633, Title I, 88 Stat. 2156, which appears generally as 49 USCS Appx. §§ 1801 et seq. For full classification of such Act, consult USCS Tables volumes.

Amendments:

1984. Act Nov. 8, 1984, in subsec. (b)(1), inserted the sentence beginning "The Administrator, in cooperation. . . ."; and added subsecs. (d)-(i).

Other provisions:

Administrator to inform and educate waste generators; study; report. Act Nov. 8, 1984, P. L. 98-616, Title II, Subtitle C, § 221(b), (d)-(f), 98 Stat. 3249, 3250, provides:

public hearing on matter and (4) industry spokesmen were specifically invited by agency to submit written comments on such issue. National Asphalt Pavement Asso. v Train (1976) 176 App DC 296, 539 F2d 775, 6 ELR 20688.

9. Different standards for different industries

EPA Administrator is not required in setting standards of performance governing emissions of air pollutants by stationary sources to present affirmative justifications for different standards in different industries; record in proceeding to review standards promulgated by EPA Administrator for control of air pollutants from new stationary sources remanded to agency due to lack of opportunity of cement manufacturers to comment on proposed standards and failure to identify basis of standards. Portland Cement Asso. v Ruckelshaus (1973) 158 App DC 308, 486 F2d 375, 3 ELR 20642, cert den 417 US 921, 41 L Ed 2d 226, 94 S Ct 2628 and later app 168 App DC 248, 513 F2d 506, 5 ELR 20341, cert den 423 US 1025, 46 L Ed 2d 399, 96 S Ct 469, reh den 423 US 1092, 47 L Ed 2d 104, 96 S Ct 889 and (disagreed with by Eagle-Picher Industries, Inc. v United States Environmental Protection Agency, 245 App DC 196, 759 F2d 922, 15 ELR 20460, later proceeding (App DC) 759 F2d 905, 15 ELR 20467, later proceeding (App DC) 822 F2d 132).

Absent proof of unreasonableness in fact that emission standard for one type of plant is allegedly more stringent than for others and absent showing that industry is unable to adjust in healthy economic fashion to end sought by Pollution Control Act as represented by standards promulgated pursuant to predecessor to 42 USCS § 7411, no basis exists for invalidating as discriminatory achievable emission standards for industry. Portland Cement Asso. v Train (1975) 168 App DC 248, 513 F2d 506, 5 ELR 20341, cert den 423 US 1025, 46 L Ed 2d 399, 96 S Ct 469, reh den 423 US 1092, 47 L Ed 2d 104, 96 S Ct 889.

10. Relationship with NEPA

NEPA requirements do not apply to EPA's promulgation under predecessor to 42 USCS § 7411 of standards of performance for stationary sources emitting air pollutants such as the regulation establishing standards for emission of air pollutants from portland cement plants. Portland Cement Asso. v Ruckelshaus (1973) 158 App DC 308, 486 F2d 375, 3 ELR 20642, cert den 417 US 921, 41 L Ed 2d 226, 94 S Ct 2628 and later app 168 App DC 248, 513 F2d 506, 5 ELR 20341, cert den 423 US 1025, 46 L Ed 2d 399, 96 S Ct 469, reh den 423 US 1092, 47 L Ed 2d 104, 96 S Ct 889 and (disagreed with by Eagle-Picher Industries, Inc. v United States Environmental Protection Agency, 245 App DC 196, 759 F2d 922, 15 ELR 20460, later proceeding (App DC) 759 F2d 905, 15 ELR 20467, later proceeding (App DC) 822 F2d 132).

No NEPA impact statement need be filed by EPA Administrator in making determinations for promulgation of air quality standards. Essex Chemical Corp. v Ruckelshaus (1973) 158 App DC 360, 486 F2d 427, 3 ELR 20732, cert den 416 US 969, 40 L Ed 2d 558, 94 S Ct 1991.

11. New source waivers

Under 42 USCS § 7411(j), operator of new source may apply for innovative technology waiver of new source performance standards after putting into operation new source for which waiver is sought. Central Illinois Public Service Co. v United States Environmental Protection Agency (1979, CA7) 594 F2d 636, 9 ELR 20226.

12. Applicability of regulations

EPA's 1974 regulation providing that, for purposes of new source performance standards, "reconstruction" of existing facility would occur irrespective of any change in emission rate upon replacement of substantial portion of existing facility's components, is not applicable to defendant's asphalt concrete facility due to defendant's replacement of filter bag house with electrostatic recipitator, where regulation did not become effective until 17 months after defendant's improvements were completed. United States v Narragansett Improv. Co. (1983, DC RI) 571 F Supp 688, 14 ELR 20168.

§ 7412. National emission standards for hazardous air pollutants

(a) Definitions. For purposes of this section—

(1) The term "hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) The term "new source" means a stationary source the construction or modification of which is commenced after the Administrator proposes regulations under this section establishing an emission standard which will be applicable to such source.

(3) The terms "stationary source", "modification", "owner or operator" and "existing source" shall have the same meaning as such terms have under section 111(a) [42 USCS § 7411(a)].

(b) **List of hazardous air pollutants; emission standards; pollution control techniques.** (1)(A) The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970 [enacted Dec. 31, 1970], publish (and shall from time to time thereafter revise) a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section.

(B) Within 180 days after the inclusion of any air pollutant in such list, the Administrator shall publish proposed regulations establishing emission standards for such pollutant together with a notice of a public hearing within thirty days. Not later than 180 days after such publication, the Administrator shall prescribe an emission standard for such pollutant, unless he finds, on the basis of information presented at such hearings, that such pollutant clearly is not a hazardous air pollutant. The Administrator shall establish any such standard at the level which in his judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant.

(C) Any emission standard established pursuant to this section shall become effective upon promulgation.

(2) The Administrator shall, from time to time, issue information on pollution control techniques for air pollutants subject to the provisions of this section.

(c) **Prohibited acts; exemption.** (1) After the effective date of any emission standard under this section—

(A) no person may construct any new source or modify any existing source which, in the Administrator's judgment, will emit an air pollutant to which such standard applies unless the Administrator finds that such source if properly operated will not cause emissions in violation of such standard, and

(B) no air pollutant to which such standard applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

(i) such standard shall not apply until 90 days after its effective date, and

(ii) the Administrator may grant a waiver permitting such source a period of up to two years after the effective date of a standard to comply with the standard, if he finds that such period is necessary for the installation of controls and that steps will be taken during

the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

(2) The President may exempt any stationary source from compliance with paragraph (1) for a period of not more than two years if he finds that the technology to implement such standards is not available and the operation of such source is required for reasons of national security. An exemption under this paragraph may be extended for one or more additional periods, each period not to exceed two years. The President shall make a report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

(d) State implementation and enforcement. (1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing emission standards for hazardous air pollutants for stationary sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this Act to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard under this section.

(e) Design, equipment, work practice, and operational standards. (1) For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which in his judgment is adequate to protect the public health from such pollutant or pollutants with an ample margin of safety. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) For the purpose of this subsection, the phrase "not feasible to prescribe or enforce an emission standard" means any situation in which the Administrator determines that (A) a hazardous pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

(3) If after notice and opportunity for public hearing, any person establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such air pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

(4) Any standard promulgated under paragraph (1) shall be promulgated in terms of an emission standard whenever it becomes feasible to promulgate and enforce such standard in such terms.

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as an emission standard for purposes of the provisions of this Act (other than the provisions of this subsection).

(July 14, 1955, ch 360, Title I, Part A, § 112, as added Dec. 31, 1970, P. L. 91-604, § 4(a), 84 Stat. 1685; Aug. 7, 1977, P. L. 95-95, Title I, §§ 109(d)(2), 110, Title IV, § 401(c), 91 Stat. 701, 703, 791; Nov. 9, 1978, P. L. 95-623, § 13(b), 92 Stat. 3458.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act July 14, 1955, ch 360, 69 Stat. 322, as generally amended by Act Dec. 17, 1963, P. L. 88-206, 77 Stat. 392, which appeared as 42 USCS §§ 1857 et seq. prior to its general amendment by Act Aug. 7, 1977, P. L. 95-95, 91 Stat. 685, and now appears as 42 USCS §§ 7401 et seq.

Explanatory notes:

This section formerly appeared as 42 USCS § 1857c-7.

Amendments:

1977. Act Aug. 7, 1977 (effective upon enactment as provided by § 406(d) of such Act, which appears as 42 USCS § 7401 note) substituted subsec. (a)(1) for one which read: The term 'hazardous air pollutant' means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator may cause, or contribute to, an increase in mortality or an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness."; in subsec. (d)(1), deleted "(except with respect to stationary sources owned or operated by the United States)" following "enforce such standards; and added subsec. (e).

1978. Act Nov. 9, 1978, in subsec. (e), added para. (5).

Other provisions:

Pending actions and proceedings. Act Aug. 7, 1977, P. L. 95-95, Title IV, § 406(a), 91 Stat. 795, which appears as 42 USCS § 7401 note, provided that suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under Act July 14, 1955, ch 360, 69 Stat. 322, which appears generally as 42 USCS §§ 7401 et seq. (for full classification of such Act, consult USCS Tables volumes), as in effect prior to the enactment of Act Aug. 7, 1977 should not abate by reason of the taking effect of Act Aug. 7, 1977.

Modification or rescission of rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, and other actions. Act Aug. 7, 1977, P. L. 95-95, Title IV, § 406(b), 91 Stat. 795, which

Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(32) The term "State authority" means the agency established or designated under section 4007 [42 USCS § 6947].

(33) The term "storage", when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(34) The term "treatment", when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(35) The term "virgin material" means a raw material, including previously unused copper, aluminum, lead, zinc, iron, or other metal or metal ore, any undeveloped resource that is, or with new technology will become, a source of raw materials.

(36) The term "used oil" means any oil which has been—

(A) refined from crude oil,

(B) used, and

(C) as a result of such use, contaminated by physical or chemical impurities.

(37) The term "recycled oil" means any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned, or reprocessed.

(38) The term "lubricating oil" means the fraction of crude oil which is sold for purposes of reducing friction in any industrial or mechanical device. Such term includes re-refined oil.

(39) The term "re-refined oil" means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

(Oct. 20, 1965, P. L. 89-272, Title II, Subtitle A, § 1004, as added Oct. 21, 1976, P. L. 94-580, § 2, 90 Stat. 2798; Nov. 8, 1978, P. L. 95-609, § 7(b), 92 Stat. 3081; Oct. 15, 1980, P.L. 96-463, § 3, 94 Stat. 2055; Oct. 21, 1980, P. L. 96-482, § 2, 94 Stat. 2334.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed "." was inserted in para. (8), as punctuation probably intended by Congress in amendment by Act Nov. 8, 1978.

Similar provisions
revision of the Act
P. L. 94-580, 90 St

Amendments:

1978. Act Nov. 8,
1979, such term do
subtitle D of this
land": in para. (10
tuted new para. (
management facilit
component thereof,
conservation, and
including hazardou
facilities generating

1980. Act Oct. 15,
Act Oct. 21, 1980 s
'open dump' means
sanitary landfill wi
para. (19) for one
material which has

Transfer of functio
Enforcement functi
ronmental Protecti
conservation and re
with respect to pre
transportation syst
transferred to the F
Alaska Natural Ga
of date of initial o
System, see Reorg
§§ 102(a), 203(a),
which appears as 5

This section is referred

Am Jur:
16 Am Jur 2d, Con
61A Am Jur 2d, E
265, 274.

§ 6904. Governmen

(a) Interstate cooperati
seq.] to be carried out
and provisions applica
such agencies and reg

under 42 USCS § 9607,
ecessary and consistent
icy plan: (1) surface
tion; (2) multilayered
vall; (4) internal with-
nternal withdrawal well
(6) groundwater moni-
operation and mainte
States v Conservation
Mo) 628 F Supp 391,
ceeding (WD Mo) 653
ding (WD Mo) 661 F
ling (WD Mo) 681 F
with by multiple cases
el. & Tel. Co. v Cha-
8 BR 581).
ining ripeness of city's
clean-up costs, under
ental Response, Com-
Act of 1980, 42 USCS
generators of industrial
ich city alleges consti-
es" under § 9601(14),
gally disposed of wastes
sts of collecting and
mples, and conducting
air quality monitoring,
ion study, are within
osts, under § 9601(23),
on of "response" costs
is sufficient to establish
e costs at affected sites.
(1986, SD NY) 633 F
), later proceeding (SD
5 11371.

n scope of term "state"
ve Environmental Re-
nd Liability Act (42
ongress entrusted with
cost for cleanup under
to sue for damages for
or loss of natural re-
)(C). Mayor & Bd. of
ical Corp. (1985, DC
ELR 20328.

hip"
defense of 42 USCS
) is not available to oil
ailed to present specific
other party having no
or contractual connec-
lely responsible for re-
tances found on subject
cised due care or took
roperty from becoming
e. Washington v Time
) 687 F Supp 529.

§ 9602. Designation of additional hazardous substances and establishment of reportable released quantities; regulations

(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 [42 USCS § 9601(14)], 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 [42 USCS § 9603]. 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.

(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 [42 USCS § 9601(14)], (1) a quantity of one pound, or (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 [42 USCS § 1321(b)(4)], such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 103(a) or (b) of this title [42 USCS § 9603(a) or (b)].

(Dec. 11, 1980, P. L. 96-510, Title I, § 102, 94 Stat. 2772; Oct. 17, 1986, P. L. 99-499, Title I, § 102, 100 Stat. 1617.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Dec. 11, 1980, P. L. 96-510, Title III, § 302(a), 94 Stat. 2808, which appears as 42 USCS § 9652(a), provides that this section shall become effective upon its enactment on Dec. 11, 1980.

Amendments:

1986. Act Oct. 17, [illegible] effective on enactment on 10/17/86, as provided by § 4 of such Act, which appears as 42 USCS § 9601 note), in subsec. (a), inserted the two sentences which begin "For all hazard-

States under the Magnuson Fishery Conservation and Management Act [16 USCS §§ 1801 et seq.], and (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.

(9) The term "facility" means (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 (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.

(10) The term "federally permitted release" means (A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act [33 USCS § 1342], (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 [33 USCS § 1342] and subject to a condition of such permit, (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 [33 USCS § 1342], which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act [42 USCS § 1344] (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005(a) through (d) of the Solid Waste Disposal Act [42 USCS § 6925(a)-(d)] 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, (F) any release in compliance with a legally enforceable permit issued under section 102 of [or] section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 [33 USCS § 1412 or 1413], (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 [42 USCS §§ 300h et seq.], (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 [42 USCS §§ 7411, 7412, 7470 et seq., 7501 et seq., or 7410] (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections, (I) any injection of fluids or other materials authorized under applicable State law (i) for the purpose of

stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (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 [33 USCS § 1317(b) or (c)] and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act [33 USCS § 1342], and (K) any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954 [42 USCS §§ 2011 et seq.], in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954 [42 USCS §§ 2011 et seq.].

(11) The term "Fund" or "Trust Fund" means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986 [26 USCS § 9507].

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

(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.

(14) The term "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 USCS § 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act [42 USCS § 9602], (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 USCS § 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 USCS § 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 USCS § 7412], and (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 [15 USCS § 2606]. 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).

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

JUNEAU LAW LIBRARY

(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 [16 USCS §§ 1801 et seq.]), 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.

(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.

(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.

(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.

(20)(A) The term "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand. 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.

(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 [42 USCS § 9607(a)(3) or (4)], (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, (ii) 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.

(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) [42 USCS § 9607(a)(3) or (4)] (i) the term "owner or operator" shall not include such

common or contract carrier, and (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.

(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 [42 USCS § 9607].

OK delete

(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.

(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 (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, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (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 [42 USCS §§ 2011 et seq.], if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act [42 USCS §§ 2210], or, for the purposes of section 104 of this title [42 USCS § 9604] 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 [42 USCS § 7912(a) or 7942(a)], and (D) the normal application of fertilizer.

(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 materal, or the taking of such

[vertical stamp:] ...LAW LIBRARY

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 [42 USCS § 9604(b)], and any emergency assistance which may be provided under the Disaster Relief Act of 1974 [42 USCS §§ 5121 et seq.].

(24) The terms "remedy" or "remedial action" means [mean] 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 offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

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

(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.

(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.

(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.

(29) The terms "disposal", "hazardous waste", and "treatment" shall have the meaning [meanings] provided in section 1004 of the Solid Waste Disposal Act [42 USCS §§ 6903].

(30) The terms "territorial sea" and "contiguous zone" shall have the meaning [meanings] provided in section 502 of the Federal Water Pollution Control Act [33 USCS § 1362].

(31) The term "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act [33 USCS § 1321(c)] or revised pursuant to section 105 of this Act [42 USCS § 9605].

(32) The terms "liable" or "liability" under this title [42 USCS §§ 9601 et seq.] shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act [33 USCS § 1321].

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

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

(35)(A) The term "contractual relationship", for the purpose of section 107(b)(3) [42 USCS § 9607(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

OFFICIAL LAW LIBRARY

circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

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

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

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

In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of section 107(b)(3)(a) and (b) [42 USCS § 9607(b)(3)(a) and (b)].

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

(C) Nothing in this paragraph or in section 107(b)(3) [42 USCS § 9607(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) [42 USCS § 107(a)(1)] and no defense under section 107(b)(3) [42 USCS § 107(b)(3)] shall be available to such defendant.

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

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

services provided by the United States to Indians because of their status as Indians.

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

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

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

(B) For purposes of section 114(c) [42 USCS § 9614(c)], the term "service station dealer" shall, notwithstanding the provisions of subparagraph (A), include any government agency that establishes a facility solely for the purpose of accepting recycled oil that satisfies the criteria set forth in subclauses (I) and (II) of subparagraph (A)(ii), and, with respect to recycled oil that satisfies the criteria set forth in subclauses (I) and (II), owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver such oil to an oil recycling facility.

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

(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.

(Dec. 11, 1980, P. L. 96-510, Title I, § 101, 94 Stat. 2767; Dec. 22, 1980, P. L. 96-561, Title II, § 238(b), 94 Stat. 3300; Oct. 17, 1986, P. L. 99-499, Title I, §§ 101, 114(b), 127(a), Title V, Part I, § 517(c)(2), 100 Stat. 1615, 1652, 1692, 1774.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Dec. 11, 1980, P. L. 96-510, 94 Stat. 2767, commonly known as the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", which appears generally as 42 USCS §§ 9601 et seq. For full classification of such Act, consult USCS Tables volumes.

"The Safe Drinking Water Act", referred to in this section, is Act Dec. 16, 1974, P. L. 93-253, 88 Stat. 1660, which appears generally as 42 USCS § 300f et seq. For full classification of such Act, consult USCS Tables volumes.

JUNEAU LAW LIBRARY

POLLUTION INSURANCE

9671. Definitions
9672. State laws; scope of title
(a) State laws
(b) Scope of title
9673. Risk retention groups
(a) Exemption
(b) Exceptions
(c) Application of exemptions
(d) Agents or brokers
9674. Purchasing groups
(a) Exemption
(b) Application of exemptions
(c) Agents or brokers
9675. Applicability of securities laws
(a) Ownership interests
(b) Investment Company Act
(c) Blue sky law

HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

§ 9601. Definitions

For purpose of this title [42 USCS §§ 9601 et seq.]—

(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.

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

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

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

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

(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 [42 USCS § 9607(a) or 9611(b)].

(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.

(8) The term "environment" means (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

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

02–576(2/77)

POLLUTION INSURANCE

9671. Definitions
9672. State laws; scope of title
(a) State laws
(b) Scope of title
9673. Risk retention groups
(a) Exemption
(b) Exceptions
(c) Application of exemptions
(d) Agents or brokers
9674. Purchasing groups
(a) Exemption
(b) Application of exemptions
(c) Agents or brokers
9675. Applicability of securities laws
(a) Ownership interests
(b) Investment Company Act
(c) Blue sky law

HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

§ 9601. Definitions

For purpose of this title [42 USCS §§ 9601 et seq.]—

(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.

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

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

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

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

(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 [42 USCS § 9607(a) or 9611(b)].

(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.

(8) The term "environment" means (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

LAW LIBRARY

'y for the proper utilization and operation of the facility after comple-
n of the project; and includes preliminary planning to determine the
)nomic and engineering feasibility and the public health and safety
)ects of the project, the engineering, architectural, legal, fiscal, and
)nomic investigations and studies, and any surveys, designs, plans,
ırking drawings, specifications, and other action necessary for the
rrying out of the project, and (C) the inspection and supervision of the
)cess of carrying out the project to completion.

A) The term "demonstration" means the initial exhibition of a new
:hnology process or practice or a significantly new combination or use
technologies, processes or practices, subsequent to the development
ge, for the purpose of proving technological feasibility and cost
ectiveness.

) The term "disposal" means the discharge, deposit, injection, dump-
;, spilling, leaking, or placing of any solid waste or hazardous waste
o or on any land or water so that such solid waste or hazardous
ıste or any constituent thereof may enter the environment or be
ıitted into the air or discharged into any waters, including ground
ıters.

) The term "Federal agency" means any department, agency, or other
ıtrumentality of the Federal Government, any independent agency or
ablishment of the Federal Government including any Government
rporation, and the Government Printing Office.

) The term "hazardous waste" means a solid waste, or combination of
lid wastes, which because of its quantity, concentration, or physical,
emical, or infectious characteristics may—

(A) cause, or significantly contribute to an increase in mortality or an
increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or
the environment when improperly treated, stored, transported, or
disposed of, or otherwise managed.

The term "hazardous waste generation" means the act or process of
)ducing hazardous waste.

The term "hazardous waste management" means the systematic
ıtrol of the collection, source separation, storage, transportation,
)cessing, treatment, recovery, and disposal of hazardous wastes.

For purposes of Federal financial assistance (other than rural
nmunities assistance), the term "implementation" does not include
acquisition, leasing, construction, or modification of facilities or
ıipment or the acquisition, leasing, or improvement of land[.]

The term "intermunicipal agency" means an agency established by
) or more municipalities with responsibility for planning or adminis-
tion of solid waste.

) The term "interstate agency" means an agency of two or more
nicipalities in different States, or an agency established by two or

§ 9607. Liability

(a) Covered persons; scope; recoverable costs and damages; interest rate; "comparable maturity" date. Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

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

(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,

(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

(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—

(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;

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

(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

(D) the costs of any health assessment or health effects study carried out under section 104(i) [42 USCS § 9604(i)].

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 [26 USCS §§ 9501 et seq.]. 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.

(b) Defenses. 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—

(1) an act of God;

(2) an act of war;

(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

(4) any combination of the foregoing paragraphs.

(c) Determination of amounts. (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—

(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;

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

(C) for any motor vehicle, aircraft, pipeline (as defined in the Hazardous Liquid Pipeline Safety Act of 1979 [49 USCS §§ 2001 et seq.]), 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 [42 USCS §§ 9601(14)(A)] 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

(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 [42 USCS §§ 9601 et seq.].

(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 (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 (ii) the primary cause of the release was a

States derives its authority for reimbursement from the specific Act of Congress passed in the exercise of a constitutional[4] function or power, its rights should also derive from federal common law. *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 726, 99 S.Ct. 1448, 1457, 59 L.Ed.2d 711 (1979); *Lake Misere*, 412 U.S. at 593, 93 S.Ct. at 2397; *Standard Oil*, 332 U.S. at 306, 67 S.Ct. at 1607; *Clearfield Trust Co. v. United States*, 318 U.S. 363, 366, 63 S.Ct. 573, 574, 87 L.Ed. 838 (1943). In conclusion, the rights, liabilities and responsibilities of the United States under 42 U.S.C. § 9607 are governed by a federal rule of decision. *Id.*

[5, 6] The question now becomes whether the scope of liability should be interpreted according to the incorporated state law of the forum state or a federally created uniform law. This determination is a matter of judicial policy dependent upon a variety of considerations relevant to the nature of the specific governmental interests and to the effects upon them of applying state law. *Kimbell*, 440 U.S. at 728, 99 S.Ct. at 1458; *Standard Oil*, 332 U.S. at 310, 67 S.Ct. at 1609. Federal programs that by their nature are and must be uniform in character throughout the nation necessitate the formulation of federal rules of decision. *Kimbell*, 440 U.S. at 728, 99 S.Ct. at 1458; *Standard Oil*, 332 U.S. at 311, 67 S.Ct. at 1609–1610. CERCLA is such a federal program. Representative Florio explained: "To insure the development of a uniform rule of law, and to discourage business dealing in hazardous substances from locating primarily in states with more lenient laws, the bill will encourage the further development of a Federal common law in this area." 126 Cong.Rec. H11787 (Dec. 3, 1980). CERCLA was designed to complement existing federal regulations by providing emergency funds for the clean-up of inactive or abandoned hazardous waste sites as well as illegal releases, such as "midnight dumping," located across the nation in virtually every state. *Id.* at H11801. Exposure to these substances poses a threat to the nation's national resources and to public health. A liability standard which varies in the different forum states would undermine the policies of the statute by encouraging illegal dumping in states with lax liability laws. *Id.* at H11787; *See* Report to Congress, Injuries and Damages From Hazardous Wastes—Analysis and Improvement of Legal Remedies, 97th Cong., 2d Sess. (1982). There is no good reason why the United States' right to reimbursement should be subjected to the needless uncertainty and subsequent delay occasioned by diversified local disposition when this matter is appropriate for uniform national treatment.

[7, 8] Finding, then, that the delineation of a uniform federal rule of decision is consistent with the legislative history and policies of CERCLA and finding further that no compelling local interests mandate the incorporation of state law, a determination of the content of the federal rule is the final step in the analysis. Federal statutes dealing with similar subject matter are a prime repository of federal policy on a subject and a starting point for ascertaining federal common law. *Illinois v. City of Milwaukee*, 406 U.S. 91, 91, 92 S.Ct. 1385, 1385, 31 L.Ed.2d 712 (1972). Neither statutes nor decisions of a particular state can be conclusive when fashioning federal law.

The Federal Water Pollution Control Act (FWPCA) was codified pursuant to the Congressional policy prohibiting oil or hazardous substance discharges into navigable waters of the United States. 33 U.S.C. § 1321(b)(1). The owner or operator of a vessel which illegally discharges may be jointly and severally liable to the government for its expenses in cleaning up the substances. *Id.* at § 1321(b)(2)(B)(ii); *United States v. M/V Big Sam*, 681 F.2d 432, 439 (5th Cir.1982); *Tex-Tow*, 589 F.2d at 1314; *In Re Berkley Curtis Bay Co.*, 557 F.Supp. 335, 339 (S.D.N.Y.1983); *aff'd in part and rem in part*, 697 F.2d 288 (2d

4. *See* U.S. Const., Art. IV, § 3, cl. 2: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States..."

Cir.1983); *United States v. Hollywood Marine, Inc.*, 519 F.Supp. 688, 692 (S.D.Tex. 1981), *rev'd on other grounds*, 625 F.2d 524 (5th Cir.1980). In fact, the pertinent language of the two statutes addressing liability and contribution is strikingly similar. *Compare* 33 U.S.C. § 1321(f)(1) *with* 42 U.S.C. § 9607(a), (b), and 33 U.S.C. § 1321(h) *with* 42 U.S.C. § 9607(e)(2). While the complementary policies and comparable language of FWPCA and CERCLA are persuasive points, a blanket adoption of the joint and several liability standard of § 1321 would be inconsistent with the legislative history of CERCLA.

Typically, as in this case, there will be numerous hazardous substance generators or transporters who have disposed of wastes at a particular site. The term joint and several liability was deleted from the express language of the statute in order to avoid its universal application to inappropriate circumstances. An examination of the common law reveals that when two or more persons acting independently caused a distinct or single harm for which there is a reasonable basis for division according to the contribution of each, each is subject to liability only for the portion of the total harm that he has himself caused. Restatement (Second) of Torts, §§ 433A, 881 (1976); Prosser, Law of Torts (4th ed. 1971), pp. 313–314; *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 260, 99 S.Ct. 2753, 2756, 61 L.Ed.2d 521 (1979); *See Michie v. Great Lakes Steel Division, National Steel Corp.*, 495 F.2d 213 (6th Cir. 1974); *See, e.g., City of Valparaiso v. Moffit*, 12 Ind.App. 250, 255, 39 N.E. 909 (1895) (two independent polluters of a stream, although not joint tortfeasors, are jointly and severally liable for damages). But where two or more persons cause a single and indivisible harm, each is subject to liability for the entire harm. Restatement (Second) of Torts, § 875; Prosser at 315–316. Furthermore, where the conduct of two or more persons liable under § 9607 has combined to violate the statute, and one or more of the defendants seeks to limit his liability on the ground that the entire harm is capable of apportionment, the burden of proof as to apportionment is upon each defendant. *Id.* at § 433B; *Id.* These rules clearly enumerate the analysis to be undertaken when applying 42 U.S.C. § 9607 and are most likely to advance the legislative policies and objectives of the Act.

C. Summary Judgment

[9] The defendants, under section 1.80 of the Manual for Complex Litigation, have moved for an early determination that they are not jointly and severally liable for the reimbursement of clean-up costs at Chem-Dyne. The proposition of the defendants is that because joint and severally liability is not expressly provided for in CERCLA, there is no basis for its imposition. We find this to be an incorrect interpretation of the Act, and will apply the law under 42 U.S.C. § 9607 as delineated in the prior discussion. The Motion of defendants is essentially a Motion for a Partial Summary Judgment on the issue of joint and several liability. Fed. R.Civ.P. 56; *See, In Re Beef Industry Antitrust Litigation*, 600 F.2d 1148, 1170 (5th Cir.1979), *cert. denied sub nom., Safeway Stores, Inc. v. Meat Price Investigators Ass'n*, 449 U.S. 905, 101 S.Ct. 280, 66 L.Ed.2d 137 (1980).

The summary judgment standard in this Circuit is a stringent one. Rule 56(c) permits the Court to grant summary judgment when there is no genuine issue of material fact and when the moving party is entitled to judgment as a matter of law. *Sartor v. Arkansas Natural Gas Corp.*, 321 U.S. 620, 64 S.Ct. 724, 88 L.Ed. 967 (1944); *Tee-Pak, Inc. v. St. Regis Paper Co.*, 491 F.2d 1193, 1195 (6th Cir.1974). In deciding a Motion for Summary Judgment, the Court must construe evidence in a light least favorable to the movant and most favorable to the opposing party. *Bohn Aluminum & Brass Corp. v. Storm King Corp.*, 303 F.2d 425, 427 (6th Cir.1962). The Court must exercise extreme caution in disposing of complex cases on a Motion for Summary Judgment. *S.J. Groves & Sons Co. v. Ohio Turnpike Commission*, 315 F.2d 235, 237 (6th Cir. 1963), *cert. denied*, 375 U.S. 824, 84 S.Ct. 65, 11 L.Ed.2d 57 (1963).

The question of whether the defendants are jointly or severally liable for the cleanup costs turns on a fairly complex factual determination. Read in the light most favorable to the plaintiff, the following facts illustrate the nature of the problem. The Chem-Dyne facility contains a variety of hazardous waste from 289 generators or transporters, consisting of about 608,000 pounds of material. Some of the wastes have commingled but the identities of the sources of these wastes remain unascertained. The fact of the mixing of the wastes raises an issue as to the divisibility of the harm. Further, a dispute exists over which of the wastes have contaminated the ground water, the degree of their migration and concomitant health hazard. Finally, the volume of waste of a particular generator is not an accurate predictor of the risk associated with the waste because the toxicity or migratory potential of a particular hazardous substance generally varies independently with the volume of the waste.

This case, as do most pollution cases, turns on the issue of whether the harm caused at Chem-Dyne is "divisible" or "indivisible." If the harm is divisible and if there is a reasonable basis for apportionment of damages, each defendant is liable only for the portion of harm he himself caused. Restatement (Second) of Torts, §§ 443A, 881. In this situation, the burden of proof as to apportionment is upon each defendant. *Id.* at § 433B. On the other hand, if the defendants caused an indivisible harm, each is subject to liability for the entire harm. *Id.* at § 875. The defendants have not carried their burden of demonstrating the divisibility of the harm and the degrees to which each defendant is responsible.

The judicial interpretation of the nature and scope of liability under 42 U.S.C. § 9607 is intended to assist the parties in expediting discovery and trial preparation. Manual of Complex Litigation, § 1.80. There is an insufficient evidentiary basis, with unresolved factual questions, which precludes the resolution of this case in the form of a summary judgment motion. Because there are genuine issues of material fact concerning the divisibility of the harm and any potential apportionment, the defendants are not entitled to judgment as a matter of law.

D. Summary

In conclusion, 42 U.S.C. § 9607 provides for a uniform federal rule of decision which delineates the scope of liability pursuant to the Restatement (Second) of Torts §§ 433B, 433A, 875, 881. Additionally, because the defendants have not shown conclusively that there exists no genuine issue of material fact, they are not entitled to the partial summary judgment as a matter of law. *Sartor,* 321 U.S. at 620, 64 S.Ct. at 724.

The Court hereby DENIES defendants' Motion for Partial Summary Judgment.

IT IS SO ORDERED.

Raye S. SKINNER

v.

OLD SOUTHERN LIFE INS. CO.

Civ. A. No. 83-1522.

United States District Court,
W.D. Louisiana,
Alexandria Division.

Oct. 11, 1983.

On motion to remand action to state court, the District Court, Nauman S. Scott, Chief Judge, held that: (1) words "receipt by the defendant, through service or otherwise" in statute governing time for filing of removal petition means receipt by service or some action which is equivalent of service, and (2) date on which insurance company as defendant received copy of insured's petition served on Louisiana Secretary of State, rather than earlier date on which defendant

the Mortgagee. Given the existence of the Fireman's Fund policy, however, Appalachian argues that its obligation to the Mortgagee was cancelled as of the date Fireman's Fund assumed coverage, and therefore Fireman's Fund is not entitled to seek contribution from Appalachian for the loss claimed by the Mortgagee. The Court agrees.

The New York standard mortgage clause has been interpreted to operate as an independent contract of insurance between the insurer and the mortgagee. *Rubenstein v. Cosmopolitan Mut. Ins. Co.*, 403 N.Y.S.2d 96, 61 A.D.2d 1029 (1978); *Fancher v. Carson-Campbell, Inc.*, 216 Kan. 141, 530 P.2d 1225 (1975); *Hartford Fire Ins. Co. v. Associates Capital Corp.*, 313 So.2d 404 (Miss. 1975); *Waynesville Sec. Bank v. Stuyvesant Ins. Co.*, 499 S.W.2d 218 (Mo.App.1973); *Travelers Indemnity Co. v. Storecraft, Inc.*, 491 S.W.2d 745 (Tex.Civ.App.1973). In actuality, however, what has been termed an "independent contract" is more accurately characterized as a right of estoppel which the mortgagee holds against the insurer so that the mortgagee is not subject to forfeiture because of any act or omission of the insured, unknown to the mortgagee. Existing case law reveals that this estoppel right exists only for the benefit of the mortgagee. The Court has not been presented with any authority which would allow a party other than the one intended to be benefited from the mortgage clause to assert a claim against an insurer for failure to notify the Mortgagee as required by the standard mortgage clause. *Cf. Fancher v. Carson-Campbell, supra,* 530 P.2d at 1228 (allowing claim based on standard mortgage clause to be asserted by individuals who were intended beneficiaries of mortgagee's position as it related to this clause).

In the present case, Fireman's Fund is attempting to pick up the estoppel rights which the Bank would have had against Appalachian. This it cannot do. In selling its policy covering the Deer Dale Property and accepting a premium therefore, Fireman's Fund extinguished the Bank's rights against Appalachian. Appalachian was thus the unintended third party beneficiary of the contract between Fireman's Fund and McCoy Lincoln-Mercury. The Court notes that Fireman's Fund did not rely on the existence of the Appalachian policy since its premium rate was not adjusted to reflect the presence of other similar insurance coverage on the Deer Dale Property. Having received a full premium, Fireman's Fund got everything it bargained for and the present holding does not deprive it of any real right. The inability of Fireman's Fund to capitalize on a possible windfall offers no occasion for this Court to afford it relief. Accordingly, judgment will be entered in favor of Appalachian and against Fireman's Fund.

An appropriate Order will be entered.

ORDER

AND NOW, TO WIT, this 7th day of October, 1983, for the reasons stated in the foregoing Memorandum, IT IS ORDERED as follows:

1. The motion of plaintiff Fireman's Fund Insurance Company for summary judgment is *denied.*

2. The motion of defendant Appalachian Insurance Company for summary judgment is *granted.*

3. Judgment is *entered* in favor of defendant Appalachian Insurance Company and against plaintiff Fireman's Fund Insurance Company.

UNITED STATES of America, Plaintiff,

v.

CHEM-DYNE CORP., et al., Defendants.

No. C-1-82-840.

United States District Court,
S.D. Ohio, W.D.

Oct. 11, 1983.

As Amended Oct. 14, 1983.

Action was brought under the Comprehensive Environmental Response, Compen-

sation, and Liability Act by the United States against defendant companies which allegedly generated or transported hazardous substances located at treatment facility for reimbursement of money expended to institute remedial action at site. Defendant companies moved for early determination that they were not jointly and severally liable for clean up costs at site. The District Court, Carl B. Rubin, Chief Judge, held that issues of fact were raised concerning divisibility of harm and any potential apportionment, and thus defendant companies were not entitled to partial summary judgment.

Motion denied.

1. Statutes ⇐216

Statements of legislation's sponsors are properly accorded substantial weight in interpreting statute, although remarks of a single legislator are not controlling.

2. Health and Environment ⇐25.5(5)

Scope of liability and term joint and several liability were deleted from Comprehensive Environmental Response, Compensation, and Liability Act in order to have scope of liability determined under common-law principles, where court performing case-by-case evaluation of complex factual scenarios associated with multiple-generator waste sites would assess propriety of applying joint and several liability on an individual basis, and was not intended as a rejection of joint and several liability. Comprehensive Environmental Response, Compensation, and Liability Act, § 107, 42 U.S.C.A. § 9607.

3. Federal Courts ⇐371

In situations where there is a lack of an express statutory provision selecting state or federal law, the inevitable incompleteness presented by all legislation means that interstitial federal lawmaking is a basic responsibility of the federal courts.

4. Federal Courts ⇐433

Rights, liabilities and responsibilities of the United States under Comprehensive Environmental Response, Compensation, and Liability Act are governed by a federal rule of decision, in view of fact that improper disposal or release of hazardous substances is an enormous and complex problem of national magnitude involving uniquely federal interests. Comprehensive Environmental Response, Compensation, and Liability Act, § 107, 42 U.S.C.A. § 9607.

5. Federal Courts ⇐374

Federal programs that by their nature are and must be uniform in character throughout the nation necessitate formulation of federal rules of decision.

6. Federal Courts ⇐433

Scope of liability under the Comprehensive Environmental Response, Compensation, and Liability Act should be interpreted according to federally created uniform law, in view of fact that federal program must be uniform in character throughout the nation. Comprehensive Environmental Response, Compensation, and Liability Act, § 107, 42 U.S.C.A. § 9607.

7. Common Law ⇐13

Federal statutes dealing with similar subject matter are a prime repository of federal policy on a subject and a starting point for ascertaining federal common law.

8. Federal Courts ⇐374

Neither statutes nor decisions of a particular state can be conclusive when fashioning federal law.

9. Federal Civil Procedure ⇐2481

In action brought under the Comprehensive Environmental Response, Compensation, and Liability Act by the United States against companies which allegedly generated or transported hazardous substances located at treatment facility for reimbursement of money expended to institute remedial action at site, issues of material fact were raised concerning divisibility of harm and any potential apportionment, and thus defendant companies were not entitled to summary judgment that they were not jointly and severally liable. Comprehensive Environmental Response, Compensation, and Liability Act, § 107, 42 U.S.C.A. § 9607.

Christopher Barnes, U.S. Atty., Elizabeth Whitaker, Asst. U.S. Atty., Cincinnati, Ohio, Carol E. Dinkins, Asst. Atty. Gen., Barry S. Sandals, James J. Dragna, Joyce R. Branda, Richard Lazarus, Land & Natural Resource Div., Deborah Woitte, U.S. Environmental Protection Agency, Washington, D.C., Jonathan McPhee, U.S. Environmental Protection Agency, Chicago, Ill., E. Dennis Muchnicki, Steven J. Willey, Asst. Attys. Gen., Environmental Law Section, Columbus, Ohio, for plaintiff.

Steve Williams, Wood, Lamping, Slutz & Reckman, Cincinnati, Ohio, for defendants Hamilton Industrial Real Es., B & W Enterprises, Whitco Enterprises and William L. Kovas.

John A. Garretson, Hamilton, Ohio, for Zettler.

Christopher R. Schraff, Martin S. Seltzer, Columbus, Ohio, for defendants Rohm & Haas Co., Delaware, Tennessee, Connecticut, Inc., CIBA-GEIGY Corp., and Shell Oil.

Alex S. Karlin, Houston, Tex., for defendant Shell Oil Co.

Ellen S. Friedell, Philadelphia, Pa., for defendant Rohm & Haas Co.

Robert A. Naidus, Ardsley, N.Y., for defendant CIBA-GEIGY Corp.

Gerald L. Baldwin, William H. Hawkins, Cincinnati, Ohio, Fred A. Windover, North Adams, Mass., for defendants Allied Corp., Aurora Casket Co. and Sprague Elec.

Thomas T. Terp, Cincinnati, Ohio, Richard W. Kearney, Gen. Counsel, Needham Heights, Mass., for defendants Ludlow Corp., Astro Containers, Inc. and The B.F. Goodrich Co.

R. Joseph Parker, Kim Burke, Cincinnati, Ohio, Phocion S. Park, St. Louis, Mo., for defendants Monsanto Co. and C.W. Zubiel Co.

Robert C. McIntosh, Arthur Knabe, Cincinnati, Ohio, for defendant Frank Irey, Jr., Inc.

Michael Szolosi, Columbus, Ohio, for defendants World Pipe Service Co., Kipin Industries and Frank Irey, Jr., Inc.

Daniel J. Gunsett, Columbus, Ohio, liam W. Falsgraf, Cleveland, Ohio, fc fendants Phillips Petroleum Co. and Bı ing Ferris Industries.

David C. Greer, Dayton, Ohio, for de ant Searle Medical Products.

John R. Cromer, Indianapolis, Ind., T as Ravis, Pittsburgh, Pa., for defendant vil Products Inc.

Richard L. Creighton, Jr., Cincin Ohio, for defendant Liberty Solvent Chemical.

Mark Wallach, Cleveland, Ohio, for fendant Chemical Solvents.

Thomas L. Conlan, Cincinnati, Ohio, J D. Tully, Warner Norcross & Judd, Gr Rapids, Mich., for defendant Bofors-Noi Inc.

ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

CARL B. RUBIN, Chief Judge.

This matter is before the Court on tl Motion of the defendants for Partial Sun mary Judgment under the Comprehensi Environmental Response, Compensatio and Liability Act, 42 U.S.C. § 960 ("CERCLA"). Plaintiff United States ha sued 24 defendants, who allegedly generat ed or transported the hazardous substance located at the Chem-Dyne treatment facili ty, for reimbursement of the superfun money expended to institute remedial ac tion at the site. In order to expedite discovery and trial preparation, the defendants have moved for an early determination that they are not jointly and severally liable for the clean-up costs at Chem-Dyne. Manual for Complex Litigation, § 1.80 (1977).

A. *Statutory Construction*

The defendants have moved for a determination of the scope of liability under CERCLA, 42 U.S.C. § 9607 which is a matter of first impression to this Court. At present, there is no case authority specifically addressing this point.

The analysis begins with an examination of the germane statutory language. *Dickerson v. New Banner Institute, Inc.*, —— U.S. ——, 103 S.Ct. 986, 74 L.Ed.2d 845 (1983). The statutory definition of liability is the standard of liability which obtains under 33 U.S.C. § 1321. 42 U.S.C. § 9601(32). The pertinent language provides that when the owner or operator of a vessel from which oil or hazardous substances is discharged in violation of § 1321(b)(3), he shall be liable to the United States Government for the actual costs ... 33 U.S.C. § 1321(f)(1). At the time of CERCLA's enactment, this section had been interpreted to impose a strict liability standard. *Steuart Transportation Co. v. United States*, 596 F.2d 609, 613 (4th Cir.1979); *United States v. Tex-Tow, Inc.*, 589 F.2d 1310, 1314–15 (7th Cir.1978); *Burgess v. M/V Tamano*, 564 F.2d 964, 982 (1st Cir. 1977), *cert. denied*, 435 U.S. 941, 98 S.Ct. 1520, 55 L.Ed.2d 537 (1978); *Tug Ocean Prince, Inc. v. United States*, 436 F.Supp. 907 (S.D.N.Y.1977), *aff'd in part, rev'd in part on other grounds*, 584 F.2d 1151 (2d Cir.1978). It is proper to assume Congress was aware of the judicial interpretation of section 1321 as a strict liability standard. *Cannon v. University of Chicago*, 441 U.S. 677, 696–97, 99 S.Ct. 1946, 1957–1958, 60 L.Ed.2d 560 (1979). In fact, the legislative history of the statute directly supports this finding. 126 Cong.Rec. S14964 (Nov. 24, 1980) H11787 (Dec. 3, 1980).

The liability section lists the classes of persons potentially liable under the Act for the costs incurred by government removal or remedial action.[1] *United States v. Waste Industries, Inc.*, 556 F.Supp. 1301 (E.D.N.C.1983); *City of Philadelphia v. Stephan Chemical Co.*, 544 F.Supp. 1135 (E.D. Pa.1982). In contrast to plaintiff's assertion that joint and several liability is clear from the express statutory language, the Court finds the language ambiguous with regard to the scope of liability. Consequently, in an attempt to discern the Congressional intent, the Court will review and weigh the legislative history of the Act. *Dickerson*, —— U.S. at ——, 103 S.Ct. at 986.

CERCLA was enacted both to provide rapid responses to the nationwide threats posed by the 30–50,000 improperly managed hazardous waste sites in this country as well as to induce voluntary responses to those sites. 5 U.S.Code Cong. & Ad.News 6119, 6119–6120 (1980). The legislation establishes a 1.6 billion dollar trust fund ("superfund"), drawn from industry and federal appropriations, to finance the clean-up and containment efforts. *Id.* at 6119. The state or federal government may then pursue rapid recovery of the costs incurred from persons liable to reimburse the superfund money expended. This recovery task may prove difficult when several companies used a site, when dumped chemicals react with others to form new or more toxic

1. Section 9607(a) provides:
Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—
(1) the owner and operator of a vessel (otherwise subject to the jurisdiction of the United States) or a facility,
(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,
(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 owned or operated by another party or entity and containing such hazardous substances, and
(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities 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—
(A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the national contingency plan;
(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan; and
(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. 42 U.S.C. § 9607(a).

substances, or when records[2] are unavailable. Nevertheless, those responsible for the problems caused by the hazardous wastes were intended to bear the costs and responsibilities for remedying the condition. 5 U.S.Code Cong. & Ad.News at 6119.

As background, two different superfund bills proceeded simultaneously through the House and Senate. On November 24, 1980, the Senate made its final amendment to its bill, thereby eliminating the term strict, joint and several liability fro. ` its provisions. 126 Cong.Rec. S14964 (Nov. 24, 1980). Subsequently, on December 3, 1980, the House struck the language in its bill and substituted the language of the Senate bill, which was later enacted. 126 Cong. Rec. H11787 (Dec. 3, 1980).

The defendants quote at length from Senator Helms' speech:

> Retention of joint and several liability in S. 1480 received intense and well-deserved criticism from a number of sources, since it could impose financial responsibility for massive costs and damages awards on persons who contributed only minimally (if at all) to a release or injury. Joint and several liability for costs and damages was especially pernicious in S. 1480, not only because of the exceedingly broad categories of persons subject to liability and the wide array of damages available, but also because it was coupled with an industry-based fund. Those contributing to the fund will frequently be paying for conditions they had no responsibility in creating or even contributing to. To adopt a joint and several liability scheme on top of this would have been grossly unfair.
>
> The drafters of the Stafford-Randolph substitute have recognized this unfairness, and the lack of wisdom in eliminating any meaningful link between culpable conduct and financial responsibility. Consequently, all references to joint and several liability in the bill have been deleted...
>
> It is very clear from the language of the Stafford-Randolph substitute itself, from the legislative history, and from t[illegible] liability provisions of section 311 of t[illegible] Federal Water Pollution Control A[illegible] that now the Stafford-Randolph bill do[illegible] not in and of itself create joint and seve[illegible]al liability.

126 Cong.Rec. S15004 (Nov. 24, 1980). Th[illegible] view of statutory construction is at odd[illegible] with the guidelines provided by the Supreme Court. Senator Helms was an opponent of the bill. *Id.* at S14988. Accordingly, his statements are entitled to littl[illegible] weight in construing the statute. *Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 204 n. 24 96 S.Ct. 1375, 1386 n. 24, 47 L.Ed.2d 668 (1975); *Holtzman v. Schlesinger,* 414 U.S. 1304, 1313 n. 13, 94 S.Ct. 1, 6 n. 13, 38 L.Ed.2d 18 (1973); *United States v. Calamaro,* 354 U.S. 351, 357, 77 S.Ct. 1138, 1142, 1 L.Ed.2d 1394 (1956); *Mastro Plastics Corp. v. NLRB,* 350 U.S. 270, 288, 76 S.Ct. 349, 360, 100 L.Ed. 309 (1956); *Schwegmann Bros. v. Calvert Distillers Corp.,* 341 U.S. 384, 394, 71 S.Ct. 745, 750, 95 L.Ed. 1035 (1951).

Senator Stafford, sponsor of the bill, succinctly noted that there was an elementation of the term joint and several liability as well as an elimination of the scope of liability. 126 Cong.Rec. S14969 (Nov. 24, 1980). Senator Randolph, sponsor, explained the significance of these modifications:

> We have kept strict liability in the compromise, specifying the standard of liability under section 311 of the Clean Water Act, but we have deleted any reference to joint and several liability, relying on common law principles to determine when parties should be severally liable... The changes were made in recognition of the difficulty in prescribing in statutory terms liability standards which will be applicable in individual cases. The changes do not reflect a rejection of the standards in the earlier bill.
>
> Unless otherwise provided in this act, the standard of liability is intended to be the same as that provided in section 311

2. *See* The Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6923, 6924.

of the Federal Water Pollution Control Act (33 U.S.C. 1321). I understand this to be a standard of strict liability.

It is intended that issues of liability not resolved by this act, if any, shall be governed by traditional and evolving principles of common law. An example is joint and several liability. Any reference to these terms has been deleted, and the liability of joint tortfeasors will be determined under common or previous statutory law.

Id. at S14964.

Turning to the House proceedings, Representative Florio, sponsor, commented at length:

The liability provisions of this bill do not refer to the terms strict, joint and several liability, terms which were contained in the version of H.R. 7020 passed earlier by this body. The standard of liability in these amendments is intended to be ... strict liability... I have concluded that despite the absence of these specific terms, the strict liability standard already approved by this body is preserved. Issues of joint and several liability not resolved by this shall be governed by traditional and evolving principles of common law. The terms joint and several have been deleted with the intent that the liability of joint tortfeasors be determined under common or previous statutory law... Rather than announce the standard, and then cut back on its applicability, this bill refers to section 311 of the Clean Water Act and to traditional and evolving principles of common law in determining the liability of such joint tortfeasors. To insure the development of a uniform rule of law, and to discourage business dealing in hazardous substances from locating primarily in States with more lenient laws, the bill will encourage the further development of a Federal common law in this area.

I might point out that section 311 has been interpreted by the Coast Guard, the Government body responsible for administering the section 311(k) revolving fund, as imposing joint and several liability under appropriate circumstances... This established policy seems particularly applicable in cases of hazardous waste sites, where several persons have often contributed to an indivisible harm.

Id. at H11787[3]. Representative Waxman observed, "[a]lthough the Senate version did not contain the House language on the question of joint and several liability, the intent of the House provisions will largely be served through the prevailing common law rules relating to apportionment among defendants who are held jointly and severally liable." *Id.* at H11799.

[1, 2] Statements of the legislation's sponsors are properly accorded substantial weight in interpreting the statute, although the remarks of a single legislator are not controlling. *Chrysler Corp. v. Brown,* 441 U.S. 281, 311, 99 S.Ct. 1705, 1722, 60 L.Ed.2d 208 (1979); *Federal Energy Administration v. Algonquin SNG, Inc.,* 426 U.S. 548, 564, 96 S.Ct. 2295, 2304, 49 L.Ed.2d 49 (1976); *Pan American World Airways, Inc. v. Civil Aeronautics Board,* 380 F.2d 770 (2d Cir. 1967), *aff'd,* 391 U.S. 461, 88 S.Ct. 1715, 20 L.Ed.2d 748 (1968). The fact that the term joint and several liability was deleted from a prior draft of the bill or that the term liability refers to the standard under 33 U.S.C. § 1321, in and of itself, is not dispositive of the scope of liability under CERCLA. *See Red Lion Broadcasting Co. v. FCC,* 395 U.S. 367, 382 n. 11, 89 S.Ct. 1794, 1802 n. 11, 23 L.Ed.2d 371 (1969). Perhaps in other contexts, when Congress deletes certain language it "strongly militates against a judgment that Congress intended

3. An opinion of the Assistant Attorney General referred to in Florio's statement and incorporated into the Congressional Record interprets 33 U.S.C. § 1321 as a strict liability standard, noting that the case law was based in part on the legislative history of that statute. 126 Cong.Rec. H11788 (Dec. 3, 1980). It was further determined that the deletion of the term joint and several liability did not preclude the courts from imposing it where appropriate. *Id.* Finally, 42 U.S.C. § 9607(e)(2), which provides for contribution, was viewed as only having relevance in joint and several liability context. *Id.*

a result that it expressly declined to enact." *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 200, 95 S.Ct. 392, 401, 42 L.Ed.2d 378 (1974). This case, however, presents an exceptional situation. A reading of the entire legislative history in context reveals that the scope of liability and term joint and several liability were deleted to avoid a mandatory legislative standard applicable in all situations which might produce inequitable results in some cases. 126 Cong. Rec. at S14964, S15004, H11787, H11799; 126 Cong.Rec. H9465 (Sept. 23, 1980) (remarks of Rep. Madigan), H9466 (remarks of Rep. Stockman). The deletion was not intended as a rejection of joint and several liability. 126 Cong.Rec. S14964, H11787, H11799 (Nov. 24, 1980). Rather, the term was omitted in order to have the scope of liability determined under common law principles, where a court performing a case by case evaluation of the complex factual scenarios associated with multiple-generator waste sites will assess the propriety of applying joint and several liability on an individual basis. *Id.*

B. Scope of Liability

[3] Because the legislative history evinces the intent that the scope of liability under CERCLA, 42 U.S.C. § 9607, be determined from traditional and evolving principles of common law, the next issue becomes whether state or federal common law should be applied. In situations where, as here, there is a lack of an express statutory provision selecting state or federal law, the inevitable incompleteness presented by all legislation means that interstitial federal lawmaking is a basic responsibility of the federal courts. *United States v. Little Lake Misere Land Co.*, 412 U.S. 580, 593, 93 S.Ct. 2389, 2397, 37 L.Ed.2d 187 (1973). Again, the legislative history addressing the common law issue is not conclusive, referring both to "common law" and to "federal common law," 126 Cong.Rec. S14964, H11787, H11799.

State law as a rule of decision is not mandated under the *Erie* doctrine in this case because it falls within the exception provided for federal laws. 28 U.S.C. § 1652; *Erie v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). Although *Erie* eliminated the power of federal courts to create federal general common law, the power to fashion federal specialized common law remains untouched when it is "necessary to protect uniquely federal interests." *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640, 101 S.Ct. 2061, 2066, 68 L.Ed.2d 500 (1981); *United States v. Standard Oil Co.*, 332 U.S. 301, 307–308, 67 S.Ct. 1604, 1607–1608, 91 L.Ed. 2067 (1947).

[4] The improper disposal or release of hazardous substances is an enormous and complex problem of national magnitude involving uniquely federal interests. Typically, an abandoned waste site will consist of waste produced by companies in several states within the area or region. W. Rodgers, Handbook on Environmental Law, pp. 619–697 (1977); Congressional Quarterly, pp. 795–804, Mar. 22, 1980. The pollution of land, groundwater, surface water and air as a consequence of this dumping presents potentially interstate problems. A driving force toward the development of CERCLA was the recognition that a response to this pervasive condition at the state level was generally inadequate. 5 U.S.Code Cong. & Ad.News at 6142. The subject matter dealt with in CERCLA is easily distinguished from areas of primarily state concern, such as domestic relations or real property rights, where state law was applied and there was no overriding interest in nationwide uniformity. *United States v. Yazell*, 382 U.S. 341, 351, 86 S.Ct. 500, 506, 16 L.Ed.2d 404 (1966); *DeSylva v. Ballentine*, 351 U.S. 570, 580, 76 S.Ct. 974, 979–980, 100 L.Ed. 1415 (1956); *United States v. Carson*, 372 F.2d 429, 434 (6th Cir.1967). Additionally, the superfund monies expended, for which the United States seeks reimbursement, are funded by general revenues and excise taxes. The degree to which the United States will be able to protect its financial interest in the trust fund is directly related to the scope of liability under CERCLA and is in no way dependent upon the laws of any state. When the United

Sec. 46.03.826. Definitions. In AS 46.03.822 — 46.03.828

(1) "act of God" means an act of nature which is unforeseeable in kind or degree;

(2) "economic benefit" means a benefit measurable in economic terms, including but not limited to the gathering, catching, or killing of food or other items utilized in a subsistence economy and their replacement cost;

(3) "having control over a hazardous substance" means producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance in or upon the water, surface, or subsurface land of the state, and specifically includes bailees and carriers of a hazardous substance;

(4) "hazardous substance" means

(A) an element or compound which, when it enters in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found; or

(B) oil;

(5) "oil" means a derivative of a liquid hydrocarbon and includes crude oil, lubricating oil, sludge, oil refuse or another petroleum-related product or by-product;

(6) "subsistence economy" means an economy which utilizes on a regular basis an item which is owned in common by the people of the state, or the United States, including but not limited to fish, game, fur bearing animals, birds, timber or any part of the natural habitat for noncommercial purposes;

(7) "water, surface or subsurface land of the state" means all water, surface or subsurface land within the territorial limits of the State of Alaska. (§ 1 ch 122 SLA 1972; am § 22 ch 7 SLA 1986)

Revisor's notes. — Reorganized in 1986 to alphabetize the defined terms.

Effect of amendments. — The 1986 amendment in paragraph (3) deleted "owning or" at the beginning of the paragraph and made minor punctuation changes.

Sec. 46.03.828. Other rights of action not affected. The provisions of AS 46.03.822 — 46.03.828 do not abridge or alter a right of action or remedy under another statute, in equity, or at common law. However, an award of damages to a person or the state on a cause of action for an injury under AS 46.03.822 bars recovery in an action by another person or the state on the same cause of action for the same injury. (§ 1 ch 122 SLA 1972)

NPDES permit containing such conditions.

(b) If the director, on the basis of available information including that supplied by the applicant pursuant to § 125.124 determines prior to permit issuance that the discharge will cause unreasonable degradation of the marine environment after application of all possible permit conditions specified in § 125.123(d), he may not issue an NPDES permit which authorizes the discharge of pollutants.

(c) If the director has insufficient information to determine prior to permit issuance that there will be no unreasonable degradation of the marine environment pursuant to § 125.122, there shall be no discharge of pollutants into the marine environment unless the director on the basis of available information, including that supplied by the applicant pursuant to § 125.124 determines that:

(1) Such discharge will not cause irreparable harm to the marine environment during the period in which monitoring is undertaken, and

(2) There are no reasonable alternatives to the on-site disposal of these materials, and

(3) The discharge will be in compliance with all permit conditions established pursuant to paragraph (d) of this section.

(d) All permits which authorize the discharge of pollutants pursuant to paragraph (c) of this section shall:

(1) Require that a discharge of pollutants will: (i) Following dilution as measured at the boundary of the mixing zone not exceed the limiting permissible concentration for the liquid and suspended particulate phases of the waste material as described in § 227.27(a) (2) and (3), § 227.27(b), and § 227.27(c) of the Ocean Dumping Criteria; and (ii) not exceed the limiting permissible concentration for the solid phase of the waste material or cause an accumulation of toxic materials in the human food chain as described in § 227.27 (b) and (d) of the Ocean Dumping Criteria;

(2) Specify a monitoring program, which is sufficient to assess the impact of the discharge on water, sediment, and biological quality including, where

appropriate, analysis of the bioaccumulative and/or persistent impact on aquatic life of the discharge;

(3) Contain any other conditions, such as performance of liquid or suspended particulate phase bioaccumulation tests, seasonal restrictions on discharge, process modifications, dispersion of pollutants, or schedule of compliance for existing discharges, which are determined to be necessary because of local environmental conditions, and

(4) Contain the following clause: In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the director determines that continued discharges may cause unreasonable degradation of the marine environment.

§ 125.124 Information required to be submitted by applicant.

The applicant is responsible for providing information which the director may request to make the determination required by this subpart. The director may require the following information as well as any other pertinent informaton:

(a) An analysis of the chemical constituents of any discharge;

(b) Appropriate bioassays necessary to determine the limiting permissible concentrations for the discharge;

(c) An analysis of initial dilution;

(d) Available process modifications which will reduce the quantities of pollutants which will be discharged;

(e) Analysis of the location where pollutants are sought to be discharged, including the biological community and the physical description of the discharge facility;

(f) Evaluation of available alternatives to the discharge of the pollutants including an evaluation of the possibility of land-based disposal or disposal in an approved ocean dumping site.

PART 129—TOXIC POLLUTANT EFFLUENT STANDARDS

Subpart A—Toxic Pollutant Effluent Standards and Prohibitions

Sec.
129.1 Scope and purpose.
129.2 Definitions.
129.3 Abbreviations.
129.4 Toxic pollutants.
129.5 Compliance.
129.6 Adjustment of effluent standard for presence of toxic pollutant in the intake water.
129.7 Requirement and procedure for establishing a more stringent effluent limitation.
129.8 Compliance date.
129.9—129.99 [Reserved]
129.100 Aldrin/dieldrin.
129.101 DDT, DDD and DDE.
129.102 Endrin.
129.103 Toxaphene.
129.104 Benzidine.
129.105 Polychlorinated biphenyls (PCBs).

AUTHORITY: Secs. 307, 308, 501, Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500, 86 Stat. 816, (33 U.S.C. 1251 *et seq.*)).

SOURCE: 42 FR 2613, Jan. 12, 1977, unless otherwise noted.

Subpart A—Toxic Pollutant Effluent Standards and Prohibitions

§ 129.1 Scope and purpose.

(a) The provisions of this subpart apply to owners or operators of specified facilities discharging into navigable waters.

(b) The effluent standards or prohibitions for toxic pollutants established in this subpart shall be applicable to the sources and pollutants hereinafter set forth, and may be incorporated in any NPDES permit, modification or renewal thereof, in accordance with the provisions of this subpart.

(c) The provisions of 40 CFR Parts 124 and 125 shall apply to any NPDES permit proceedings for any point source discharge containing any toxic pollutant for which a standard or prohibition is established under this part.

§ 129.2 Definitions.

All terms not defined herein shall have the meaning given them in the

Act or in 40 CFR Part 124 or 125. As used in this part, the term:

(a) "Act" means the Federal Water Pollution Control Act, as amended (Pub. L. 92-500, 86 Stat. 816 *et seq.*, 33 U.S.C.1251 *et seq.*). Specific references to sections within the Act will be according to Pub. L. 92-500 notation.

(b) "Administrator" means the Administrator of the Environmental Protection Agency or any employee of the Agency to whom the Administrator may by order delegate the authority to carry out his functions under section 307(a) of the Act, or any person who shall by operation of law be authorized to carry out such functions.

(c) "Effluent standard" means, for purposes of section 307, the equivalent of "effluent limitation" as that term is defined in section 502(11) of the Act with the exception that it does not include a schedule of compliance.

(d) "Prohibited" means that the constituent shall be absent in any discharge subject to these standards, as determined by any analytical method.

(e) "Permit" means a permit for the discharge of pollutants into navigable waters under the National Pollutant Discharge Elimination System established by section 402 of the Act and implemented in regulations in 40 CFR Parts 124 and 125.

(f) "Working day" means the hours during a calendar day in which a facility discharges effluents subject to this part.

(g) "Ambient water criterion" means that concentration of a toxic pollutant in a navigable water that, based upon available data, will not result in adverse impact on important aquatic life, or on consumers of such aquatic life, after exposure of that aquatic life for periods of time exceeding 96 hours and continuing at least through one reproductive cycle; and will not result in a significant risk of adverse health effects in a large human population based on available information such as mammalian laboratory toxicity data, epidemiological studies of human occupational exposures, or human exposure data, or any other relevant data.

(h) "New source" means any source discharging a toxic pollutant, the construction of which is commenced after proposal of an effluent standard or prohibition applicable to such source if such effluent standard or prohibition is thereafter promulgated in accordance with section 307.

(i) "Existing source" means any source which is not a new source as defined above.

(j) "Source" means any building, structure, facility, or installation from which there is or may be the discharge of toxic pollutants designated as such by the Administration under section 307(a)(1) of the Act.

(k) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a source as defined above.

(l) "Construction" means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

(m) "Manufacturer" means any establishment engaged in the mechanical or chemical transformation of materials or substances into new products including but not limited to the blending of materials such as pesticidal products, resins, or liquors.

(n) "Process wastes" means any designated toxic pollutant, whether in wastewater or otherwise present, which is inherent to or unavoidably resulting from any manufacturing process, including that which comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product or waste product and is discharged into the navigable waters.

(o) "Air emissions" means the release or discharge of a toxic pollutant by an owner or operator into the ambient air either (1) by means of a stack or (2) as a fugitive dust, mist or vapor as a result inherent to the manufacturing or formulating process.

(p) "Fugitive dust, mist or vapor" means dust, mist or vapor containing a toxic pollutant regulated under this part which is emitted from any source other than through a stack.

(q) "Stack" means any chimney, flue, conduit, or duct arranged to conduct emissions to the ambient air.

prohibition applicable to such sour[ce] if such effluent standard or prohib[i]tion is thereafter promulgated in a[c]cordance with section 307.

(i) "Existing source" means an[y] source which is not a new source as [de]fined above.

(j) "Source" means any buildi[ng], structure, facility, or installation fr[om] which there is or may be the discharg[e] of toxic pollutants designated as su[ch] by the Administration under sectio[n] 307(a)(1) of the Act.

(k) "Owner or operator" means an[y] person who owns, leases, operates, con[]trols, or supervises a source as define[d] above.

(l) "Construction" means any plac[e]ment, assembly, or installation of fa[]cilities or equipment (including con[]tractual obligations to purchase suc[h] facilities or equipment) at the prem[]ises where such equipment will be used, including preparation work a[t] such premises.

(m) "Manufacturer" means any es[]tablishment engaged in the mechani[]cal or chemical transformation of ma[]terials or substances into new products including but not limited to the blend[]ing of materials such as pesticidal products, resins, or liquors.

(n) "Process wastes" means any des[]ignated toxic pollutant, whether in wastewater or otherwise present which is inherent to or unavoidably re[]sulting from any manufacturing proc[]ess, including that which comes into direct contact with or results from the production or use of any raw material intermediate product, finished prod[]uct, by-product or waste product and is discharged into the navigable waters.

(c) "Air emissions" means the re[]lease or discharge of a toxic pollutant by an owner or operator into the ambi[]ent air either (1) by means of a stack or (2) as a fugitive dust, mist or vapor as a result inherent to the manufac[]turing or formulating process.

(p) "Fugitive dust mist or vapor" means dust, mist or vapor containing a toxic pollutant regulated under this part which is emitted from any source other than through a stack.

(q) "Stack" means any chimney, flue, conduit, or duct arranged to con[]duct emissions to the ambient air.

(r) "Ten year 24-hour rainfall event" means the maximum precipitation event with a probable recurrence in[ter]val of once in 10 years as defined by the National Weather Service in Tech[ni]cal Paper No. 40, "Rainfall Frequen[cy] Atlas of the United States," May 1961, and subsequent amendments or [equiv]alent regional or State rainfall [prob]ability information developed therefrom.

(s) "State Director" means the chief administrative officer of a State or interstate water pollution control agency operating an approved HPDES permit program. In the event responsi[bi]lity for water pollution control and enforcement is divided among two or more State or interstate agencies, the term "State Director" means the ad[mi]nistrative officer authorized to per[form] the particular procedure to which reference is made.

§ 129.3 Abbreviations.

The abbreviations used in this part represent the following terms:

lb - pound (or pounds).

g - gram.

µg/l - micrograms per liter (1 one-millionth gram/liter).

kg - kilogram(s).

kkg - 1000 kilogram(s).

§ 129.4 Toxic pollutants.

The following are the pollutants subject to regulation under the provi[]sions of this subpart:

(a) Aldrin/Dieldrin—"Aldrin" means the compound aldrin as identified by the chemical name, 1,2,3,4,10,10-hex[a]chloro-1,4,4a,5,8,8a-hexahydro - 1,4 - endo-5,8-exo-dimethanonaphthalene; "Dieldrin" means the compound diel[]drin as identified by the chemical name 1,2,3,4,10,10-hexachloro - 6,7 - epoxy - 1,4,4a,5,6,7,8,8a-octahydro-1,4-endo-5,8-exo-dimethanonaphthalene.

(b) DDT—"DDT" means the com[]pounds DDT, DDD, and DDE as iden[]tified by the chemical names: (DDT)-1,1,1-trichloro-2,2 - bis(p - chloro[]phenyl) ethane and some o,p'-isomers; (DDD) or (TDE) - 1,1 - dichloro - 2,2-bis(p-chlorophenyl) ethane and some o,p'-isomers; (DDE) - 1,1 - dichloro-2,2-bis(p-chlorophenyl) ethylene.

(c) Endrin—"Endrin" means the compound endrin as identified by the chemical name 1,2,3,4,10,10-hexach[]loro-6,7-epoxy - 1,4,4a,5,6,7,8,8a - octa[]hydro - 1,4-endo-5,8-endodimethano[]naphthalene.

(d) Toxaphene—"Toxaphene" means a material consisting of technical grade chlorinated camphene having the approximate formula of $C_{10}H_{10}Cl_8$ and normally containing 67-69 percent chlorine by weight.

(e) Benzidine—"Benzidine" means the compound benzidine and its salts as identified by the chemical name 4,4'-diaminobiphenyl.

(f) Polychlorinated Biphenyls (PCBs) "polychlorinated biphenyls" (PCBs) means a mixture of com[]pounds composed of the biphenyl mol[]ecule which has been chlorinated to varying degrees.

[42 FR 2613, Jan. 12, 1977, as amended at 42 FR 2620, Jan. 12, 1977; 42 FR 6555, Feb. 2, 1977]

§ 129.5 Compliance.

(a)(1) Within 60 days from the date of promulgation of any toxic pollutant effluent standard or prohibition each owner or operator with a discharge subject to that standard or prohibition must notify the Regional Administra[]tor (or State Director, if appropriate) of such discharge. Such notification shall include such information and follow such procedures as the Region[]al Administrator (or State Director, if appropriate) may require.

(2) Any owner or operator who does not have a discharge subject to any toxic pollutant effluent standard at the time of such promulgation but who thereafter commences or intends to commence any activity which would result in such a discharge shall first notify the Regional Administrator (or State Director, if appropriate) in the manner herein provided at least 60 days prior to any such discharge.

(b) Upon receipt of any application for issuance or reissuance of a permit or for a modification of an existing permit for a discharge subject to a toxic pollutant effluent standard or prohibition the permitting authority shall proceed thereon in accordance with 40 CFR Part 124 or 125, whichev[]er is applicable.

ATTORNEY GENERAL

cation. The submission of an application or the scheduling of a hearing does not stay the operation of the department's order issued under (a) of this section

(d) After a hearing the department may affirm, modify or set aside the order. An order affirmed, modified or set aside after hearing is subject to judicial review as provided in AS 44.62.560. The order is not stayed pending judicial review unless the commissioner so directs. If an order is not immediately complied with, the attorney general, upon request of the commissioner, shall seek enforcement of the order.

(e) The department may adopt additional regulations prescribing the procedure to be followed in the issuance of emergency orders. (§ 3 ch 120 SLA 1971)

Sec. 46.03.822. Strict liability for the discharge of hazardous substances. To the extent not otherwise preempted by federal law, a person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state is strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by the entry. In an action to recover damages, the person is relieved from strict liability, without regard to fault, if the person can prove

(1) that the hazardous substance to which the damages relate entered in or upon the water, surface or subsurface land of the state solely as a result of

(A) an act of war,

(B) an intentional act or a negligent act of a third party, other than a party or its employees in privity of contract with, or employed by, the person,

(C) negligence on the part of the United States government or the State of Alaska, or

(D) an act of God; and

(2) in relation to (1)(B), (C) or (D) of this section, that the person discovered the entry of the hazardous substance in or upon the waters, surface or subsurface land of the state and began operations to contain and clean up the hazardous substance within a reasonable period of time. (§ 1 ch 122 SLA 1972; am § 13 ch 220 SLA 1976)

Cross references. — For provision that actions brought under this section may be brought directly against insurers or other persons providing evidence of financial responsibility. see AS 46.04.040(e).

Sec. 46.03.824. Damages. Damages include but are not limited to injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit. (§ 1 ch 122 SLA 1972)

61.242-8 Standards: Pressure relief devices in liquid service and flanges and other connectors.
61.242-9 Standards: Product accumulator vessels.
61.242-10 Standards: Delay of repair.
61.242-11 Standards: Closed-vent systems and control devices.
61.243-1 Alternative standrds for valves in VHAP Service—allowable percentage of valves leaking.
61.243-2 Alternative standards for valves in VHAP service—skip period leak detection and repair.
61.244 Alternative means of emission limitation.
61.245 Test methods and procedures.
61.246 Recordkeeping requirements.
61.247 Reporting requirements.

Subpart W—National Emission Standard for Radon-222 Emissions from Licensed Uranium Mill Tailings

61.250 Applicability.
61.251 Definitions.
61.252 Standard.

APPENDIX A—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS. COMPLIANCE STATUS INFORMATION
APPENDIX B—TEST METHODS
APPENDIX C—QUALITY ASSURANCE PROCEDURES

AUTHORITY: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

SOURCE: 38 FR 8826, Apr. 6, 1973, unless otherwise noted.

Subpart A—General Provisions

§ 61.01 Lists of pollutants and applicability of Part 61.

(a) The following list presents the substances that, pursuant to section 112 of the Act, have been designated as hazardous air pollutants. The FEDERAL REGISTER citations and dates refer to the publication in which the listing decision was originally published.

Asbestos (36 FR 5931; Mar. 31, 1971)
Benzene (42 FR 29332; June 8, 1977)
Beryllium (36 FR 5931; Mar. 31, 1971)
Coke Oven Emissions (49 FR 36560; Sept. 18, 1984)
Inorganic Arsenic (45 FR 37886; June 5, 1980)
Mercury (36 FR 5931; Mar. 31, 1971)
Radionuclides (44 FR 76738; Dec. 27, 1979)
Vinyl Chloride (40 FR 59532; Dec. 24, 1975)

(b) The following list presents other substances for which a FEDERAL REGISTER notice has been published that included consideration of the serious health effects, including cancer, from ambient air exposure to the substance.

Acrylonitrile (50 FR 24319; June 10, 1985)
1,3-Butadiene (50 FR 41466; Oct. 10, 1985)
Cadmium (50 FR 42000; Oct. 16, 1985)
Carbon Tetrachloride (50 FR 32621; Aug. 13, 1985)
Chlorinated Benzenes (50 FR 32628; Aug. 13, 1985)
Chlorofluorocarbon—113 (50 FR 24313; June 10, 1985)
Chloroform (50 FR 39626; Sept. 27, 1985)
Chloroprene (50 FR 39632; Sept. 27, 1985)
Chromium (50 FR 24317; June 10, 1985)
Copper (52 FR 5496; Feb. 23, 1987)
Epichlorohydrin (50 FR 24575; June 11, 1985)
Ethylene Dichloride (50 FR 41994; Oct. 16, 1985)
Ethylene Oxide (50 FR 40286; Oct. 2, 1985)
Hexachlorocyclopentadiene (50 FR 40154; Oct. 1, 1985)
Manganese (50 FR 32627; Aug. 13, 1985)
Methyl Chloroform (50 FR 24314; June 10, 1985)
Methylene Chloride (50 FR 42037; Oct. 17, 1985)
Nickel (51 FR 34135; Sept. 25, 1986)
Perchloroethylene (50 FR 52800; Dec. 26, 1985)
Phenol (51 FR 22854; June 23, 1986)
Polycyclic Organic Matter (49 FR 31680; Aug. 8, 1984)
Toluene (49 FR 22195; May 25, 1984)
Trichloroethylene (50 FR 52422; Dec. 23, 1985)
Vinylidene Chloride (50 FR 32632; Aug. 13, 1985)
Zinc and Zinc Oxide (52 FR 32597, Aug. 28, 1987)

(c) This part applies to the owner or operator of any stationary source for which a standard is prescribed under this part.

[50 FR 46290, Nov. 7, 1985, as amended at 51 FR 7715 and 7719, Mar. 5, 1986; 51 FR 11022, Apr. 1, 1986; 52 FR 37617, Oct. 8, 1987]

§ 61.02 Definitions.

The terms used in this part are defined in the Act or in this section as follows:

"Act" means the Clean Air Act (42 U.S.C. 7401 et seq.).

"Administrator" means the Administrator of the Environmental Protec-

Comprehensive Environmental Response, Compensation, and Liability Act
42 U.S.C. §§9601-9675

As amended by
the Superfund Amendments and Reauthorization Act of 1986

A Comparison Text of the Statute Before and After Amendment

How To Use This Text

This reprint of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) includes both the original statute enacted in 1980 and the changes made by the Superfund Amendments and Reauthorization Act of 1986 (SARA).

1. New language added by SARA is printed in *italics.*

2. Original language left unchanged by SARA is printed in Roman type.

3. Original language deleted from the law by SARA is printed in Roman type within boldface brackets **[ ]**.

Thus, CERCLA as it now exists is printed in italics and unbracketed Roman type. CERCLA as it existed prior to the SARA amendments is in Roman type, without regard to boldface brackets. Changes made by SARA can be seen by comparing the italicized revisions with language inside boldface brackets.

This text may be used in conjunction with the annotated legislative history to SARA: Atkeson, et al., *An Annotated Legislative History of the Superfund Amendments and Reauthorization Act of 1986 (SARA),* 16 ELR 10363 (Dec. 1986). Changes to the statute with legislative history in SARA are enclosed in arrows ► ◄ with a reference to the portion of the annotated legislative history describing the provision.

Example:

► I.A. Scope of Superfund
SARA §101(f)

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

In this example, the discussion of the legislative history of this provision is in section I.A. of the annotated legislative history, entitled "Scope of Superfund," and dealing with SARA §101(f). A table of contents of the annotated legislative history appears at 16 ELR 10360.

Comprehensive Environmental Response, Compensation, and Liability Act of 1980

42 U.S.C. §§9601–9675[1]

Subchapter I—Hazardous Substances Releases, Liability, Compensation
ELR 44005

§ 9601. [CERCLA §101]
Definitions

§ 9602. [CERCLA §102]
Designation of additional hazardous substances and establishment of reportable released quantities; regulations

§ 9603. [CERCLA §103]
Notification requirements respecting released substances
- (a) Notice to National Response Center upon release from vessel or offshore or onshore facility by person in charge; conveyance of notice by Center
- (b) Penalties for failure to notify; use of notice or information pursuant to notice in criminal case
- (c) Notice to Administrator of EPA of existence of storage, etc., facility by owner or operator; exceptions; time, manner, and form of notice; penalties for failure to notify; use of notice or information pursuant to notice in criminal case
- (d) Recordkeeping requirements; promulgation of rules and regulations by Administrator of EPA; penalties for violations; waiver of retention requirements
- (e) Applicability to registered pesticide product
- (f) Exemptions from notice and penalty provisions for substances reported under other Federal law or is in continuous release, etc.

§ 9604. [CERCLA §104]
Response authorities
- (a) Removal and other remedial action by President; applicability of national contingency plan; definition
- [(b) Investigations, monitoring, etc., by President]
- *(b) Information; studies and investigations; coordination of investigations*
- (c) Criteria for continuance of obligations from Fund over specified amount for response actions; consultation by President with affected States; contracts or cooperative agreements by States with President prior to remedial actions; cost-sharing agreements; selection by President of appropriate remedial actions
- (d) Contracts or cooperative agreements by President with States or political subdivisions; cost-sharing provisions; enforcement requirements and procedures
- [(e) Access to, and copying of, records relating to covered substances; availability to public of records, reports, and information; procedure applicable]
- *(e) Information gathering and access*
- (f) Contracts for response actions; compliance with Federal health and safety standards
- (g) Rates for wages and labor standards applicable to covered work
- (h) Emergency procurement powers; exercise by President
- (i) Agency for Toxic Substances and Disease Registry; establishment, functions, etc.
- *(j) Acquisition of property*

§ 9605. [CERCLA §105]
National contingency plan; preparation; contents; etc.
- *(a) Revision and republication*
- *(b) Revision of plan*
- *(c) Hazard ranking system*
- *(d) Petition for assessment of release*
- *(e) Releases from earlier sites*
- *(f) Minority contractors*
- *(g) Special study wastes*

§ 9606. [CERCLA §106]
Abatement actions
- (a) Maintenance, jurisdiction, etc.,
- (b) Fines
- (c) Guidelines for using imminent hazard, enforcement, and emergency response authorities; promulgation by Administrator of EPA, scope, etc.

§ 9607. [CERCLA §107]
Liability
- (a) Covered persons; scope
- (b) Defenses
- (c) Determination of amounts
- [(d) Activities pursuant to national contingency plan]
- *(d) Rendering care or advice*
- (e) Indemnification, hold harmless, etc., agreements or conveyances; subrogation rights
- (f) Actions involving natural resources; maintenance, scope, etc.
- [(g) Applicability to Federal government branches]
- *(g) Federal agencies*
- (h) Owner or operator of vessel
- (i) Application of a registered pesticide product
- (j) Obligations or liability pursuant to federally permitted release
- (k) Transfer to, and assumption by, Post-closure Liability Fund of liability of owner or operator of hazardous waste disposal facility in receipt of permit under applicable solid waste disposal law; time, criteria applicable, procedures, etc.; monitoring costs; reports
- *(l) Federal lien*
- *(m) Maritime lien*

§ 9608. [CERCLA §108]
Financial responsibility
- (a) Establishment and maintenance by owner or operator of vessel; amount; failure to obtain certification of compliance

(b) Establishment and maintenance by owner or operator of production, etc., facilities; amount; adjustment; consolidated form of responsibility; coverage of motor carriers
[(c) Claims against guarantor; maintenance, etc.]
(c) Direct action
[(d) Liability of guarantor]
(d) Limitation of guarantor liability

§ 9609. [CERCLA §109]
[Civil penalties]
Civil penalties and awards
(a) Class I administrative penalty
(b) Class II administrative penalty
(c) Judicial assessment
(d) Awards
(e) Procurement procedures
(f) Savings clause

§ 9610. [CERCLA §110]
Employee protection
(a) Activities of employee subject to protection
(b) Administrative grievance procedures in cases of alleged violations
(c) Assessment of costs and expenses against violator subsequent to issuance of order of abatement
(d) Defenses
(e) Presidential evaluations of potential loss of shifts of employment resulting from administration or enforcement of provisions; investigations; procedures applicable, etc.
Note: Worker protection standards

§ 9611. [CERCLA §111]
Uses of Fund
(a) Authorized purposes
(b) Additional authorized purposes
(c) Peripheral matters and limitations
(d) Additional limitations
(e) Funding requirements respecting moneys in Fund
(f) Obligation of moneys by Federal officials; obligation of moneys or settlement of claims by State officials
(g) Notice to potential injured parties by owner and operator of vessel or facility causing release of substance; rules and regulations
[(h) Assessment of damages for injury, etc., to natural resources from release of substances: determination, etc.] *Repealed.*
(i) Restoration, etc., of natural resources
(j) Use of Post-closure Liability Fund
[(k) Audit review, etc., by Inspector General of Federal department or agency delegated with responsibility to obligate moneys]
(k) Inspector General
(l) Foreign claimants
(m) Agency for Toxic Substances and Disease Registry
(n) Limitations on research, development, and demonstration program
(o) Notification procedures for limitations on certain payments

§ 9612. [CERCLA §112]
Claims procedure
(a) Presentation of assertable claims against owner, operator, guarantor, or other person; election of available remedies upon failure to satisfy presentment
[(b) Forms and procedures applicable]
(b) Prescribing forms and procedures; payment or request for hearing; burden of proof; decisions; finality and appeal; payment
(c) Subrogation rights; actions maintainable
[(d) Time for presentation of claims or maintenance of actions]
(d) Statute of limitations
(e) Other statutory or common law claims not waived, etc.
(f) Double recovery prohibited

§9613. [CERCLA §113]
Civil proceedings
(a) Review of regulations in Circuit Court of Appeals of the United States for the District of Columbia
(b) Jurisdiction; venue
(c) Controversies or other matters resulting from tax collection or tax regulation review
(d) Litigation commenced prior to December 11, 1980
(e) Nationwide service of process
(f) Contribution
(g) Period in which action may be brought
(h) Timing of review
(i) Intervention
(j) Judicial review
(k) Administrative record and participation procedures
(l) Notice of actions

§9614. [CERCLA §114]
Relationship to other law
(a) Additional State liability or requirements with respect to release of substances within State
(b) Recovery under other State or Federal law of compensation for removal costs or damages, or payment of claims
[(c) Contributions to other funds: limitations, etc.]
(c) Recycled oil
(d) Financial responsibility of owner or operator or vessel of facility under State or local law, rule, or regulation

§9615. [CERCLA §115]
Presidential delegation and assignment of duties or powers and promulgation of regulations

§9616. [CERCLA §116]
Schedules
(a) Assessment and listing of facilities
(b) Evaluation
(c) Explanations
(d) Commencement of RI/FS
(e) Commencement of remedial action

§9617. [CERCLA §117]
Public participation
(a) Proposed plan
(b) Final plan

(c) Explanation of differences
(d) Publication
(e) Grants for technical assistance

§ 9618. *[CERCLA §118]*
High priority for drinking water supplies
Note: Removal and temporary storage of containers of radon contaminated soil; unconsolidated quaternary aquifer; study of shortages of skilled personnel; State requirements not applicable to certain transfers; study of lead poisoning in children; Federally licensed dam; community relocation at Times Beach site; limited waivers in State of Illinois; study of joint use of trucks; radon assessment and mitigation; Gulf Coast Hazardous Substance Research, Development and Demonstration Center; radon protection at current national priorities list sites; spill control technology; Pacific Northwest Hazardous Substance Research, Development and Demonstration Center; Silver Creek tailings

§ 9619. *[CERCLA §119]*
Response action contractors
(a) Liability of response action contractors
(b) Savings provisions
(c) Indemnification
(d) Exception
(e) Definitions
(f) Competition

§ 9620. *[CERCLA §120]*
Federal facilities
(a) Application of Act to Federal Government
(b) Notice
(c) Federal agency hazardous waste compliance docket
(d) Assessment and evaluation
(e) Required action by department
(f) State and local participation
(g) Transfer of authorities
(h) Property transferred by Federal agencies
(i) Obligations under Solid Waste Disposal Act
(j) National security

§ 9621. *[CERCLA §121]*
Cleanup standards
(a) Selection of remedial action
(b) General rules
(c) Review
(d) Degree of cleanup
(e) Permits and enforcement
(f) State involvement

§ 9622. *[CERCLA §122]*
Settlements
(a) Authority to enter into agreements
(b) Agreements with potentially responsible parties
(c) Effect of agreement
(d) Enforcement
(e) Special notice procedures
(f) Covenant not to sue
(g) De minimis settlements
(h) Cost recovery settlement authority
(i) Settlement procedures
(j) Natural resources
(k) Section not applicable to vessels
(l) Civil penalties
(m) Applicability of general principles of law

§ 9623. *[CERCLA §123]*
Reimbursement to local governments
(a) Application
(b) Reimbursement
(c) Amount
(d) Procedure

§ 9624. *[CERCLA §124]*
Methane recovery
(a) In general
(b) Exceptions

§ 9625. *[CERCLA §125]*
Section 3001(b)(3)(A)(i) waste
(a) Revision of hazard ranking system
(b) Inclusion prohibited

§ 9626. *[CERCLA §126]*
Indian tribes
(a) Treatment generally
(b) Community relocation
(c) Study
(d) Limitation

Subchapter II—Hazardous Substance Response Revenue

Part A—Hazardous Substance Response Trust Fund
ELR 44065

§ 9631. [CERCLA §221]
Establishment of Hazardous Substance Response Trust Fund
(a) Creation of Trust Fund
(b) Transfers to Response Trust Fund
[(c) Expenditures from Response Trust Fund]
(c) Expenditures from Trust Fund

§ 9632. [CERCLA §222]
Liability of United States limited to amounts in Trust Fund
(a) General rule
(b) Order in which unpaid claims are to be paid

§ 9633. [CERCLA §223]
Administrative provisions
(a) Method of transfer
(b) Management of Trust Fund
(c) Authority to borrow

Part B—Post-Closure Liability Trust Fund
ELR 44066

§ 9641. [CERCLA §232]
Post-closure Liability Trust Fund
(a) Creation of Trust Fund
(b) Expenditures from Post-closure Liability Trust Fund
(c) Administrative provisions

Subchapter III—Miscellaneous Provisions

ELR 44067

§ 9651. [CERCLA §301]
Reports and studies
(a) Implementation experiences; identification and disposal of waste
(b) Private insurance protection
(c) Regulations respecting assessment of damages to natural resources

(d) Issues, alternatives, and policy considerations involving selection of locations for waste treatment, storage, and disposal facilities
(e) Adequacy of existing common law and statutory remedies
(f) Modification of national contingency plan
(g) Insurability study
(h) Report and oversight requirements

§ 9652. [CERCLA §302]
Effective dates; savings provisions

§ 9653. [CERCLA §303]
Termination of authority to collect taxes

§ 9654. [CERCLA § 304(b), (c)]
Applicability of Federal water pollution control funding, etc., provisions

§ 9655. [CERCLA §305]
Legislative veto of rule or regulation
(a) Transmission to Congress upon promulgation or repromulgation of rule or regulation; disapproval procedures
(b) Approval; effective dates
(c) Sessions of Congress as applicable
(d) Congressional inaction on, or rejection of, resolution of disapproval

§ 9656. [CERCLA §306]
Transportation of hazardous substances; listing as hazardous material; liability for release

§ 9657. [CERCLA §308]
Separability of provisions

§ 9658. [CERCLA §309]
Actions under state law for damages from exposure to hazardous substances
(a) State statutes of limitations for hazardous substance cases
(b) Definitions

§ 9659. [CERCLA §310]
Citizens suits
(a) Authority to bring civil actions
(b) Venue
(c) Relief
(d) Rules applicable to subsection (a)(1) actions
(e) Rules applicable to subsection (a)(2) actions
(f) Costs
(g) Intervention
(h) Other rights
(i) Definitions

§ 9660. [CERCLA §311]
Research, development, and demonstration
(a) Hazardous substance research and training
(b) Alternative or innovative treatment technology research and demonstration program
(c) Hazardous substance research
(d) University hazardous substance research centers
(e) Report to Congress
(f) Saving provision
(g) Small business participation

§ 9661. [CERCLA §312]
Love Canal property acquisition
(a) Acquisition of property in emergency declaration area
(b) Procedures for acquisition
(c) State ownership
(d) Maintenance of property
(e) Habitability and land use study
(f) Funding
(g) Response
(h) Definitions

Subchapter IV—Pollution Insurance[1]
ELR 44079

§ 9671. [CERCLA §401]
Definitions

§ 9672. [CERCLA §402]
State laws; scope of title
(a) State laws
(b) Scope of title

§ 9673. [CERCLA §403]
Risk retention groups
(a) Exemption
(b) Exceptions
(c) Application of exemptions
(d) Agents or brokers

§ 9674. [CERCLA §404]
Purchasing groups
(a) Exemption
(b) Application of exemptions
(c) Agents or brokers

§ 9675. [CERCLA §405]
Applicability of securities laws
(a) Ownership interests
(b) Investment Company Act
(c) Blue Sky Law

[1] At press time, §§401 through 405 had not yet been codified in the United States Code. The editors of ELR have assigned these sections to 42 U.S.C. §§9671-9675, based on their position within CERCLA.

SUBCHAPTER I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

§ 9601. [CERCLA § 101]

Definitions

For the purpose of this subchapter[, the term]—

(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[;].

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

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

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

(5) *The term* "claimant" means any person who presents a claim for compensation under this chapter[;].

(6) *The term* "damages" means damages for injury or loss of natural resources as set forth in section 9607(a) or 9611(b) of this title[;].

(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 [42 U.S.C.A. § 300f et seq.]) or as drinking water by one or more individuals[;].

(8) *The term* "environment" means (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 [16 U.S.C.A. § 1801 et seq.], and (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[;].

(9) *The term* "facility" means (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 (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[;].

(10) *The term* " federally permitted release" means (A) discharges in compliance with a permit under section 1342 of Title 33, (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 1342 of Title 33 and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 1342 of Title 33, which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 1344 of Title 33, (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005(a) through (d) of the Solid Waste Disposal Act [42 U.S.C.A. § 6925(a) to (d)] 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, (F) any release in compliance with a legally enforceable permit issued under section 1412 of Title 33 or section 1413 of Title 33, (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 [42 U.S.C.A. § 300h et seq.], (H) any emission into the air subject to a permit or control regulation under section 111 [42 U.S.C.A. § 7411], section 112 [42 U.S.C.A. § 7412], Title I part C [42 U.S.C.A. § 7470 et seq.], Title I part D [42 U.S.C.A. § 7501 et seq.], or State implementation plans submitted in accordance with section 110 of the Clean Air Act [42 U.S.C.A. § 7410] (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections, (I) any injection of fluids or other materials authorized under applicable State law (i) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (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 1317(b) or (c) of Title 33 and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 1342 of Title 33, and (K) any release of source, special nuclear, or by- product material, as those terms are defined in the Atomic Energy Act of 1954 [42 U.S.C.A. § 2011 et seq.], in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954[;].

(11) *The term* "Fund" or "Trust Fund" means the Hazardous Substance Response Fund established by section 9631 of this title or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 9607(k) of this title, the Post- closure Liability Fund established by section 9641 of this title[;].

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

(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 chapter[;].

(14) *The term* "hazardous substance" means (A) any substance designated pursuant to section 1321(b)(2)(A) of Title 33, (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the

Solid Waste Disposal Act [42 U.S.C.A. § 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C.A. § 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 1317 (a) of Title 33, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C.A. § 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 2606 of Title 15. 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)[;].

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

►I.H. Indian Tribes
SARA § 101(a)

(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 [16 U.S.C.A. § 1801 et seq.]) any State or local government, [or] any foreign government, *any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe*[;].◄

(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[;].

(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[;].

(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[;].

►II.B. Liability Limits
SARA § 101(b)

(20)(A) *The term* "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and [(iii) in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment.] *(iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand*. 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[;].

(B) [i]*I*n the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 9607(a)(3) or (4) of this title, (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, (ii) 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[;].

(C) [i]*I*n 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 9607(a)(3) or (4) of this title (i) the term "owner or operator" shall not include such common or contract carrier, and (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[;].

(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 chapter in the same manner and to the same extent, both procedurally-and substantively,-as any nongovernmental entity, including liability under section 9607.◄

(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[;].

►I.A. Scope of Superfund
SARA § 101(c)

(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 (A) any release which results in exposure to persons soley within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (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 [42 U.S.C.A. § 2011 et seq.], if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section

170 of such Act [42 U.S.C.A. § 2210], or, for the purposes of section 9604 of this title or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 7912(a)(1) or 7942(a) of this title, and (D) the normal application of fertilizer[;].◄

(23) *The terms* "remove" or "removal" means² the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary ¹ 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 9604(b) of this title, and any emergency assistance which may be provided under the Disaster Relief Act of 1974 [42 U.S.C.A. § 5121 et seq.][;].

►I.F. Cleanup Standards
SARA § 101(d)

(24) *The terms* "remedy" or "remedial action" means² 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 or 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 offsite of hazardous substances, or may otherwise be necessary to protect the public health or [welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act [42 U.S.C.A. § 6921 et seq.], hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials:] *welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.*◄

►I.C. Federal/State Cost Sharing
SARA § 101(e)

(25) *The terms* "respond" or "response" means² remove, removal, remedy, and remedial action[;], *all such terms (including the terms "removal" and "remedial action") include enforcement activities related thereto.*◄

(26) *The terms* "transport" or "transportation" means² 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[;].

(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[;].

(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[;].

(29) *The terms* "disposal", "hazardous waste", and "treatment" shall have the meaning provided in section 1004 of the Solid Waste Disposal Act [42 U.S.C.A. § 6903][;].

(30) *The terms* "territorial sea" and "contiguous zone" shall have the meaning provided in section 1362 of Title 33.

(31) *The term* "national contingency plan" means the national contingency plan published under section 1321(c) of Title 33 or revised pursuant to section 9605 of this title[; and].

(32) *The terms* "liable" or "liability" under this subchapter shall be construed to be the standard of liability which obtains under section 1321 of Title 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).

►I.A. Scope of Superfund
SARA § 101(f)

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

►II.B. Liability Limits
SARA § 101(f)

(35)(A) The term "contractual relationship", for the purpose of section 9607(b)(3), includes, but is not limited to, land contracts, deeds or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

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

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

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

In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of section 9607(b)(3)(a) and (b).

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

(C) Nothing in this paragraph or in section 9607(b)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this chapter. 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 9607(a)(1) and no defense under section 9607(b)(3) shall be available to such defendant.

(D) Nothing in this paragraph shall affect the liability under this chapter 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. ◄

►I.H. Indian Tribes
SARA § 101(f)

(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. ◄

►IV.G. Recycled Oil
SARA § 114(b)

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

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

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

(B) For purposes of section 9614(c), the term "service station dealer" shall, notwithstanding the provisions of subparagraph (A), include any government agency that establishes a facility solely for the purpose of accepting recycled oil that satisfies the criteria set forth in subclauses (I) and (II) of subparagraph (A)(ii), and with respect to recycled oil that satisfies the criteria set forth in subclauses (I) and (II), owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver such oil to an oil recycling facility.

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

►IV.K. Ocean Incineration
SARA § 127(a)

(38) The term "incineration vessel" means any vessel which carries hazardous substances for the purposes of incineration of such substances, so long as such substances or residues of such substances are on board. ◄

Pub.L. 96-510, Title I, § 101, Dec. 11, 1980, 94 Stat. 2767; Pub.L. 96-561, Title II, § 238(b), Dec. 22, 1980, 94 Stat. 3300, as added and amended Pub.L. 99-499, Title I, §§ 101, 114(b), 127(a), Oct. 17, 1986.

So in original. Probably should be "or".
So in original. Probably should be "mean".
So in original. Probably should be "necessarily".

SHORT TITLE OF 1986 AMENDMENTS. Section 1 of Pub.L. 99-499 provided that: "This Act [which amended this chapter generally] may be cited as the 'Superfund Amendments and Reauthorization Act of 1986.'"

CERCLA AND ADMINISTRATOR. Section 2 of Pub.L. 99-499 provided that: "As used in this Act [which amended this chapter generally]—

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

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

LIMITATION ON CONTRACT AND BORROWING AUTHORITY. Section 3 of Pub.L. 99-499 provided that: "Any authority provided by this Act [which amended this chapter generally] including any amendment made by this Act, to enter into contracts to obligate the United States or to incur indebtedness for the repayment of which the United States is liable shall be effective only to such extent or in such amounts as are provided in appropriation Acts."

EFFECTIVE DATE OF 1986 AMENDMENTS. Section 4 of Pub.L. 99-499 provided that: "Except as otherwise specified in section 121(b) of this Act [which amended this chapter generally] or in any other provision of titles I, II, III, and IV of this Act, the amendments made by titles I through IV of this Act shall take effect on the enactment of this Act."

§ 9602. [CERCLA § 102]

Designation of additional hazardous substances and establishment of reportable released quantities; regulations

►IV.A. Reportable Quantities
SARA § 102

(a) The Administrator shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to those referred to in section 9601(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 9603 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.* ◄

(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 9601(14) of this title, (1) a quantity of one pound, or (2) for those hazardous substances for which reportable quantities have been established pursuant to section 1321(b)(4) of Title 33, such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 9603(a) or (b) of this title.

Pub.L. 96-510, Title I, § 102, Dec. 11, 1980, 94 Stat. 2772, as added Pub.L. 99-499, Title I, § 102, Oct. 17, 1986.

§ 9603. [CERCLA § 103]

Notification requirements respecting released substances

(a) Notice to National Response Center upon release from vessel or offshore or onshore facility by person in charge; conveyance of notice by Center

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 9602 of this title, immediately notify the National Response Center established under the Clean Water Act [33 U.S.C.A. § 1251 et seq.] of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

(b) Penalties for failure to notify; use of notice or information pursuant to notice in criminal case

Any person—

(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

(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 [16 U.S.C.A. § 1801 et seq.]), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

►II.D. Civil and Criminal Penalties
SARA § 109(a)

(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 9602 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 [not more than $10,000 or imprisoned for not more than one year, or both] *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◄.

►II.D. Civil and Criminal Penalties
SARA § 103

Notification received pursuant to this [paragraph] *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.◄

(c) Notice to Administrator of EPA of existence of storage, etc., facility by owner or operator; exceptions; time, manner, and form of notice; penalties for failure to notify; use of notice or information pursuant to notice in criminal case

Within one hundred and eighty days after December 11, 1980, 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 9601(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 [42 U.S.C.A. § 6921 et seq.], 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 9607 of this title: *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.

(d) Recordkeeping requirements; promulgation of rules and regulations by Administrator of EPA; penalties for violations; waiver of retention requirements

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

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

(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.

►II.D. Civil and Criminal Penalties
SARA § 109(a)

(2) Beginning with December 11, 1980, 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 [not more than $20,000, or imprisoned for not more than one year or both.] *in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both*◄.

(3) At any time prior to the date which occurs fifty years after December 11, 1980, 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 chapter. 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.

(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.

(e) Applicability to registered pesticide product

This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C.A. § 136 et seq.] or to the handling and storage of such a pesticide product by an agricultural producer.

(f) Exemptions from notice and penalty provisions for substances reported under other Federal law or is in continuous release, etc.

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

(1) which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act [42 U.S.C.A. § 6921 et seq.] or regulations thereunder

thereunder and which has been reported to the National Response Center, or

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

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

(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.

Pub.L. 96-510, Title I, § 103, Dec. 11, 1980, 94 Stat. 2772; Pub.L. 96-561, Title II, § 238(b), Dec. 22, 1980, 94 Stat. 3300, as added and amended Pub.L. 99-499, Title I, §§ 103, 109(a), Oct. 17, 1986.

[1] So in original. Probably should be "expeditiously".

§ 9604. [CERCLA § 104]

Response authorities

(a) Removal and other remedial action by President; applicability of national contingency plan; definition

►I.B. Response Authorities
SARA § 104(a)

(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (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[, unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party.]. *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 9622. 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.*◄

►I.A. Scope of Superfund
SARA § 104(a)

The President shall give primary attention to those releases which the President deems may present a public health threat.◄

►I.K. Removal Actions
SARA § 104(b)

[(2) For the purposes of this section, "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. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as hazardous substances under section 9601(14)(A) through (F) of this title, nor does it include natural gas, liquefied natural gas, or sythetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).]

(2) REMOVAL ACTION.—Any removal action undertaken by the President under this subsection (or by any other person referred to in section 9622) 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.◄

►I.A. Scope of Superfund
SARA § 104(c)

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

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

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

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

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

[Investigations, monitoring, etc., by President]

(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 chapter.

►I.N. Natural Resource Damages
SARA § 104(d)

(2) COORDINATION OF INVESTIGATIONS.—The President shall promptly notify the appropriate Federal and State natural resource trustees of potential damages to natural recources 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.◄

(c) Criteria for continuance of obligations from Fund over specified amount for response actions; consultation by President with affected States; contracts or cooperative agreements by States with President prior to remedial actions; cost-sharing agreements; selection by President of appropriate remedial actions

►I.K. Removal Actions
SARA § 104(e)

(1) Unless (A) the President finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (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 (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 [$1,000,000] *$2,000,000* has been obligated for response actions or [six months] *12 months* has elapsed from the date of initial response to a release or threatened release of hazardous substances.◄

(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.

►I.C. Federal/State Cost Sharing
SARA § 104(f)

(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 (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; (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 [42 U.S.C.A. § 6921 et seq.] for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or [(ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof.] *(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 December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 9611 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.◄

►I.H. Indian Tribes
SARA § 207(b)

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.◄

►I.F. Cleanup Standards
SARA § 104(g)

[(4) The President shall select appropriate remedial actions determined to be necessary to carry out this section which are to the extent practicable in accordance with the

national contingency plan and which provide for that cost-effective response which provides 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 established under subchapter II of this chapter to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action.]

(4) SELECTION OF REMEDIAL ACTION.—The President shall select remedial actions to carry out this section in accordance with section 9621 of this title (relating to cleanup standards). ◄

►I.C. Federal/State Cost Sharing
SARA § 104(h),(i)

(5) STATE CREDITS.—

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

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

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

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

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

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

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

(F) USE OF CREDITS.—Credits granted under this paragraph for funds expended with respect to a facility may be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions at such facility. If the amount of funds for which credit is allowed under this paragraph exceeds such share of costs for such facility, the State may use the amount of such excess to reduce all or part of the share of such costs at other facilities in that State. A credit shall not entitle the State to any direct payment.

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

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

►IV.J. Recontracting
SARA § 104(j)

(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. ◄

►I.E. State Assurances of Capacity
SARA § 104(k)

(9) SITING.—Effective 3 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement

with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which—

(A) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

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

(C) are acceptable to the President, and

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

(d) Contracts or cooperative agreements by President with States or political subdivisions; cost-sharing provisions; enforcement requirements and procedures

►I.C. Federal/State Cost Sharing
SARA § 104(l)

[(1) Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 9605(8) of this title and to be reimbursed for the reasonable response costs thereof from the Funds. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section.]

(1) COOPERATIVE AGREEMENTS.—

(A) STATE APPLICATIONS.—A State or political subdivision thereof or Indian tribe may apply to the President to carry out actions authorized in this section. If the President determines that the State or political subdivision or Indian tribe has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 9605(a)(8) and to carry out related enforcement actions, the President may enter into a contract or cooperative agreement with the State or political subdivision or Indian tribe to carry out such actions. The President shall make a determination regarding such an application within 90 days after the President receives the application.

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

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

(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.

(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 subchapter, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(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.

►II.E. EPA Access and Information Gathering
SARA § 104(m)

[(e) Access to, and copying of, records relating to covered substances; availability to public of records, reports, and information; procedures applicable

(1) For purposes of assisting in determining the need for response to a release under this subchapter or enforcing the provisions of this subchapter, any person who stores, treats, or disposes of, or, where necessary to ascertain facts not available at the facility where such hazardous substances are located, who generates, transports, or otherwise handles or has handled, hazardous substances shall, upon request of any officer, employee, or representative of the President, duly designated by the President, or upon request of any duly designated officer, employee, or representative of a State, where appropriate, furnish information relating to such substances and permit such person at all reasonable times to have access to, and to copy all records relating to such substances. For the purposes specified in the preceding sentence, such officers, employees, or representatives are authorized—

(A) to enter at reasonable times any establishment or other place where such hazardous substances are or have been generated, stored, treated, or disposed of, or transported from;

(B) to inspect and obtain samples from any person of any such substance and samples of any containers or labeling for such substances. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or person in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume of weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or person in charge.]

(e) INFORMATION GATHERING AND ACCESS.—

(1) ACTION AUTHORIZED.—Any officer, employee, or representative of the President duly designated by the President, is authorized to take ac-

tion 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 subchapter, or otherwise enforcing the provisions of this subchapter.

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

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

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

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

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

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

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

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

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

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

(4) INSPECTION AND SAMPLES.—

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

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

►II.D. Civil and Criminal Penalties
SARA § 104(m)

(5) COMPLIANCE ORDERS.—

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

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

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

(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the de-

mand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

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

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

[(2)] (7) *CONFIDENTIALITY OF INFORMATION.—*

(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, 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 chapter, or when relevant in any proceeding under this chapter.

(B) Any person not subject to the provisions of section 1905 of Title 18 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.

(C) In submitting data under this chapter, a person required to provide such data may (i) designate the data which such person believes is entitled to protection under this subsection and (ii) submit such designated data separately from other data submitted under this chapter. A designation under this paragraph shall be made in writing and in such manner as the President may prescribe by regulation.

(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 chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

►**II.E. EPA Access and Information Gathering SARA § 104(n)**

(E) No person required to provide information under this chapter may claim that the information is entitled to protection under this paragraph unless such person shows each of the following:

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

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

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

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

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

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

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

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

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

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

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

(vii) Any hydrogeologic or geologic data.

(viii) Any groundwater monitoring data. ◄

(f) Contracts for response actions; compliance with Federal health and safety standards

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 9651(f) of this title by contractors and subcontractors as a condition of such contracts.

(g) Rates for wages and labor standards applicable to covered work

(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 [40 U.S.C.A. § 276a et seq.]. The President shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(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.

(h) Emergency procurement powers; exercise by President

Notwithstanding any other provision of law, subject to the provisions of section 9611 of this title, the President may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this chapter. 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.

(i) Agency for Toxic Substances and Disease Registry; establishment, functions, etc.

►I.L. Health Related Authorities SARA § 110

(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, the Administrator of the Occupational Safety and Health Administration, [and] 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 chapter. In addition, said Administrator shall—

[(1)]*(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;

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

[(3)]*(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;

[(4)]*(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

[(5)]*(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.

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

(B) Within 24 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of ATSDR and the Administrator of EPA shall revise the list prepared under subparagraph (A). Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. In each of the 3 consecutive 12-month periods that follow, the Administrator of ATSDR and the Administrator of EPA shall revise, in the same manner as provided in the 2 preceding sentences, such list to include not fewer than 25 additional hazardous substances per revision. The Administrator of ATSDR and the Administrator of EPA shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in subparagraph (A).

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

(A) An examination, summary, and interpretation of available toxicological information and

epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6)(A) The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 9605. 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 Admendments and Reauthorization Act of 1986 or not later than one year after the date of proposal for inclusion on such list for each facility proposed for inclusion on such list after such date of enactment.

(B) The Administrator of ATSDR may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that in-

...uals have been exposed to a hazardous substance, for ...h the probable source of such exposure is a release. ...ddition to other methods (formal or informal) of pro...ing such information, such individual persons or licens... physicians may submit a petition to the Administrator ... ATSDR providing such information and requesting a ...ealth assessment. If such a petition is submitted and the ...dministrator of ATSDR does not initiate a health assess...ent, the Administrator of ATSDR shall provide a writ...en explanation of why a health assessment is not ...appropriate.

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

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

(E) Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator of EPA and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

(F) For the purposes of this subsection and section 9611(c)(4), the term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

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

(H) At the completion of each health assessment, the Administrator of ATSDR shall provide the Administrator of EPA and each affected State with the results of such assessment, together with any recommendations for further actions under this subsection or otherwise under this chapter. 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 9605(a)(8)(A) to determine whether the site shall be placed on the National Priorities List or, if the site is already on the list, the Administrator of ATSDR may recommend to the Administrator of EPA that the site be accorded a higher priority.

(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

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

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

(9) Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health

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

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

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

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

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

(B) epidemiologic studies conducted;

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

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

(E) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances due to releases from facilities covered by this chapter or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health effects in humans.

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

(A) provision of alternative water supplies, and

(B) permanent or temporary relocation of individuals.

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

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

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

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

(15) The activities of the Administrator of ATSDR described in this subsection and section 9611(c)(4) shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

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

(17) In accordance with section 9620 (relating to Federal facilities), the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

(18) If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollu-

tant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.

►I.I. Property Acquisition
SARA § 104(o)

(j) ACQUISITION OF PROPERTY.—

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

(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.

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

Pub.L. 96-510, Title I, § 104, Dec. 11, 1980, 94 Stat. 2774, as added and amended Pub.L. 99-499, Title I, §§ 104, 110, Title II, § 207(b), Oct. 17, 1986.

§ 9605. [CERCLA § 105]

National contingency plan; preparation, contents, etc.

►I.D. NCP/HRS/NPL
SARA § 105(a)

(a) REVISIONS AND REPUBLICATION.—Within one hundred and eighty days after December 11, 1980, 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 1321 of Title 33, to reflect and effectuate the responsibilities and powers created by this chapter, in addition to those matters specified in section 1321(c)(2) of Title 33. 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:

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

(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;

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

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

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

(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;

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

(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;

(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 December 11, 1980, 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, [at least four hundred of] 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 at least] *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; [and]

(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*◄

►I.M. Research and Development
SARA § 105(a)

(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 chapter.◄

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 1321(c)(2)(F) and (G) and (j)(1) of Title 33. 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.

►I.D. NCP/HRS/NPL
SARA § 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 chapter which are consistent with amendments made by the Superfund Amendments and Reauthorization Act of 1986 relating to the selection of remedial action.

(c) HAZARD RANKING SYSTEM.—

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

(2) HEALTH ASSESSMENT OF WATER CONTAMINATION RISK.—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.

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

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

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

(e) RELEASES FROM EARLIER SITES.—Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a "Site Cleaned Up To Date" on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List, without application of the hazard ranking system.

(f) MINORITY CONTRACTORS.—In awarding contracts under this chapter, 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 chapter, the participation of minority firms in contracts carried out under this chapter. Such report shall contain a brief description of the contracts which have been awarded to minority firms under this chapter and of the efforts made by the President to encourage the participation of such firms in programs carried out under this chapter.

(g) SPECIAL STUDY WASTES.—

(1) APPLICATION—This subsection applies to facilities—

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

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

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

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

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

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

(4) INFORMATION GATHERING AND ANALYSIS.—Nothing in this chapter 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).

Pub.L. 96-510, Title I, § 105, Dec. 11, 1980, 94 Stat. 2779, as added and amended Pub.L. 99-499, Title I, § 105, Oct. 17, 1986

§ 9606. [CERCLA § 106]

Abatement actions

(a) Maintenance, jurisdiction, etc.

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.

(b) Fines

►II.D. Civil and Criminal Penlties
SARA §§ 106, 109(b)

(1) Any person [who willfully] *who, without sufficient cause, willfully* violates, or fails or refuses to comply with, any order of the President under subsection (a) of this section may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than [$5,000] *$25,000* for each day in which such violation occurs or such failure to comply continues.◄

►II.A. Judicial Review
SARA § 106

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

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

(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 9607(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

(D) A petitioner who is liable for response costs under section 9607(a) may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

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

(c) Guidelines for using imminent hazard, enforcement, and emergency response authorities; promulgation by Administrator of EPA, scope, etc.

Within one hundred and eighty days after December 11, 1980, 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 responsiblities and powers created by this chapter. 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 1321(c)(2), 1318, 1319, and 1364(a) of Title 33, (2) sections 6927, 6928, 6934, and 6973 of this title, (3) sections 300j-4 and 300i of this title, (4) sections 7413, 7414, and 7603 of this title, and (5) section 2606 of Title 15.

Pub.L. 96-510, Title I, § 106, Dec. 11, 1980, 94 Stat. 2780, as added and amended Pub.L. 99-499, Title I, §§ 106, 109(b), Oct. 17, 1986.

§ 9607. [CERCLA § 107]

Liability

(a) Covered persons; scope

►II.L. Foreign Vessels
SARA § 107(a)

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

(1) the owner and operator of a vessel [(otherwise subject to the jurisdiction of the United States)] or a facility,◄

(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,

►IV.K. Ocean Incineration
SARA § 127(b)

(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

(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—◄

►I.H. Indian Tribes
SARA § 207(c)

(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;◄

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

(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*

►I.L. Health Related Authorities
SARA § 107(b)

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

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

(b) Defenses

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—

(1) an act of God;

(2) an act of war;

(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

(4) any combination of the foregoing paragraphs.

(c) Determination of amounts

(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—

►IV.K. Ocean Incineration
SARA § 127(b)

(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;

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

(C) for any motor vehicle, aircraft, pipeline (as defined in the Hazardous Liquid Pipeline Safety Act of 1979 [49 U.S.C.A. § 2001 et seq.]), 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 9601(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

(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 subchapter.◄

(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 (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 (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 (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 or vessels subject to the provisions of Title 33 or 46, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(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 9604 or 9606 of this title, 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 9612(c) of this title. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

►II.B. Liability Limits
SARA § 107(c)

[(d) Activities pursuant to national contingency plan

No person shall be liable under this subchapter for 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 or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.]

(d) RENDERING CARE OR ADVICE.—

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

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

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

(e) Indemnification, hold harmless, etc., agreements or conveyances; subrogation rights

(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.

(2) Nothing in this subchapter, 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.

(f) Actions involving natural resources; maintenance, scope, etc.

(1) NATURAL RESOURCES LIABILITY.—

►I.H. Indian Tribes
SARA § 207(c)

In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) of this section 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) of this section, 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.*◄

►I.N. Natural Resource Damages
SARA § 107(d)

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. [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, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources.] *Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource.* There shall be no recovery under the authority of subparagraph (C) of subsection (a) of this section where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

(2) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—

(A) FEDERAL.—The President shall designate in the National Contingency Plan published under section 9605 of this title the Federal officials who shall act on behalf of the public as trustees for natural resources under this chapter 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 chapter and such section 311 for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship.

(B) STATE.—The Governor of each State shall designate State officials who may act on behalf of the public as trustee for natural resources under this chapter 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 chapter and such section 311 for those natural resources under their trusteeship.

(C) REBUTTABLE PRESUMPTION.—Any determination or assessment of damages to natural resources for the purposes of this chapter 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 9651(c) of this title shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this chapter or section 311 of the Federal Water Pollution Control Act.◄

►I.O. Federal Facilities
SARA § 107(e)

[(g) Applicability to Federal Government branches

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section.]

(g) FEDERAL AGENCIES.—For provisions relating to Federal agencies, see section 9620 of this title.◄

(h) Owner or operator of vessel

►IV.K. Ocean Incineration
SARA § 127(e)

The owner or operator of a vessel shall be liable in accordance with this section, *under maritime tort law,* and as provided under section 9614 of this title notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff) *or the absence of any physical damage to the proprietary interest of the claimant.*◄

(i) Application of registered pesticide product

►I.H. Indian Tribes
SARA § 207(c)

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 [7