

(B) the person had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling; or

(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material (including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances).

(2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include (but are not limited to) the size of the person's business, customary industry practices (including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances), the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material.

(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

(g) Effect on other liability

Nothing in this section shall be deemed to affect the liability of a person under paragraph (1) or (2) of section 9607(a) of this title.

(h) Regulations

The Administrator has the authority, under section 9615 of this title, to promulgate additional regulations concerning this section.

(i) Effect on pending or concluded actions

The exemptions provided in this section shall not affect any concluded judicial or administrative action or any pending judicial action initiated by the United States prior to November 29, 1999.

(j) Liability for attorney's fees for certain actions

Any person who commences an action in contribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees.

(k) Relationship to liability under other laws

Nothing in this section shall affect—

(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.]; or

(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act.

(l) Limitation on statutory construction

Nothing in this section shall be construed to—

(1) affect any defenses or liabilities of any person to whom subsection (a)(1) of this section does not apply; or

(2) create any presumption of liability against any person to whom subsection (a)(1) of this section does not apply.

(Pub. L. 96-510, title I, §127, as added Pub. L. 106-113, div. B, §1000(a)(9) [title VI, §6001(b)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A-599.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (d)(1)(B) and (k), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

SUPERFUND RECYCLING EQUITY; PURPOSES

Pub. L. 106-113, div. B, §1000(a)(9) [title VI, §6001(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-598, provided that: "The purposes of this section [enacting this section] are—

"(1) to promote the reuse and recycling of scrap material in furtherance of the goals of waste minimization and natural resource conservation while protecting human health and the environment;

"(2) to create greater equity in the statutory treatment of recycled versus virgin materials; and

"(3) to remove the disincentives and impediments to recycling created as an unintended consequence of the 1980 Superfund liability provisions."

§ 9628. State response programs

(a) Assistance to States

(1) In general

(A) States

The Administrator may award a grant to a State or Indian tribe that—

(i) has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements, listed in paragraph (2); or

(ii) is a party to a memorandum of agreement with the Administrator for voluntary response programs.

(B) Use of grants by States

(i) In general

A State or Indian tribe may use a grant under this subsection to establish or enhance the response program of the State or Indian tribe.

(ii) Additional uses

In addition to the uses under clause (i), a State or Indian tribe may use a grant under this subsection to—

(I) capitalize a revolving loan fund for brownfield remediation under section 9604(k)(3) of this title; or

(II) purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State response program.

(2) Elements

The elements of a State or Indian tribe response program referred to in paragraph (1)(A)(i) are the following:

(A) Timely survey and inventory of brownfield sites in the State.

(B) Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that—

(i) a response action will—

(I) protect human health and the environment; and

(II) be conducted in accordance with applicable Federal and State law; and

(ii) if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed.

(C) Mechanisms and resources to provide meaningful opportunities for public participation, including—

(i) public access to documents that the State, Indian tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;

(ii) prior notice and opportunity for comment on proposed cleanup plans and site activities; and

(iii) a mechanism by which—

(I) a person that is or may be affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfield site located in the community in which the person works or resides may request the conduct of a site assessment; and

(II) an appropriate State official shall consider and appropriately respond to a request under subclause (I).

(D) Mechanisms for approval of a cleanup plan, and a requirement for verification by and certification or similar documentation from the State, an Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response is complete.

(3) Funding

There is authorized to be appropriated to carry out this subsection \$50,000,000 for each of fiscal years 2002 through 2006.

(b) Enforcement in cases of a release subject to State program

(1) Enforcement

(A) In general

Except as provided in subparagraph (B) and subject to subparagraph (C), in the case of an eligible response site at which—

(i) there is a release or threatened release of a hazardous substance, pollutant, or contaminant; and

(ii) a person is conducting or has completed a response action regarding the specific release that is addressed by the response action that is in compliance with the State program that specifically governs response actions for the protection of public health and the environment,

the President may not use authority under this chapter to take an administrative or ju-

dicial enforcement action under section 9606(a) of this title or to take a judicial enforcement action to recover response costs under section 9607(a) of this title against the person regarding the specific release that is addressed by the response action.

(B) Exceptions

The President may bring an administrative or judicial enforcement action under this chapter during or after completion of a response action described in subparagraph (A) with respect to a release or threatened release at an eligible response site described in that subparagraph if—

(i) the State requests that the President provide assistance in the performance of a response action;

(ii) the Administrator determines that contamination has migrated or will migrate across a State line, resulting in the need for further response action to protect human health or the environment, or the President determines that contamination has migrated or is likely to migrate onto property subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States and may impact the authorized purposes of the Federal property;

(iii) after taking into consideration the response activities already taken, the Administrator determines that—

(I) a release or threatened release may present an imminent and substantial endangerment to public health or welfare or the environment; and

(II) additional response actions are likely to be necessary to address, prevent, limit, or mitigate the release or threatened release; or

(iv) the Administrator, after consultation with the State, determines that information, that on the earlier of the date on which cleanup was approved or completed, was not known by the State, as recorded in documents prepared or relied on in selecting or conducting the cleanup, has been discovered regarding the contamination or conditions at a facility such that the contamination or conditions at the facility present a threat requiring further remediation to protect public health or welfare or the environment. Consultation with the State shall not limit the ability of the Administrator to make this determination.

(C) Public record

The limitations on the authority of the President under subparagraph (A) apply only at sites in States that maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions have been completed in the previous year and are planned to be addressed under the State program that specifically governs response actions for the protection of public health and the environment in the upcoming year. The public record shall identify whether or not the site, on completion of the response ac-

tion, will be suitable for unrestricted use and, if not, shall identify the institutional controls relied on in the remedy. Each State and tribe receiving financial assistance under subsection (a) of this section shall maintain and make available to the public a record of sites as provided in this paragraph.

(D) EPA notification

(i) In general

In the case of an eligible response site at which there is a release or threatened release of a hazardous substance, pollutant, or contaminant and for which the Administrator intends to carry out an action that may be barred under subparagraph (A), the Administrator shall—

(I) notify the State of the action the Administrator intends to take; and

(II)(aa) wait 48 hours for a reply from the State under clause (ii); or

(bb) if the State fails to reply to the notification or if the Administrator makes a determination under clause (iii), take immediate action under that clause.

(ii) State reply

Not later than 48 hours after a State receives notice from the Administrator under clause (i), the State shall notify the Administrator if—

(I) the release at the eligible response site is or has been subject to a cleanup conducted under a State program; and

(II) the State is planning to abate the release or threatened release, any actions that are planned.

(iii) Immediate Federal action

The Administrator may take action immediately after giving notification under clause (i) without waiting for a State reply under clause (ii) if the Administrator determines that one or more exceptions under subparagraph (B) are met.

(E) Report to Congress

Not later than 90 days after the date of initiation of any enforcement action by the President under clause (ii), (iii), or (iv) of subparagraph (B), the President shall submit to Congress a report describing the basis for the enforcement action, including specific references to the facts demonstrating that enforcement action is permitted under subparagraph (B).

(2) Savings provision

(A) Costs incurred prior to limitations

Nothing in paragraph (1) precludes the President from seeking to recover costs incurred prior to January 11, 2002, or during a period in which the limitations of paragraph (1)(A) were not applicable.

(B) Effect on agreements between States and EPA

Nothing in paragraph (1)—

(i) modifies or otherwise affects a memorandum of agreement, memorandum of understanding, or any similar agreement re-

lating to this chapter between a State agency or an Indian tribe and the Administrator that is in effect on or before January 11, 2002 (which agreement shall remain in effect, subject to the terms of the agreement); or

(ii) limits the discretionary authority of the President to enter into or modify an agreement with a State, an Indian tribe, or any other person relating to the implementation by the President of statutory authorities.

(3) Effective date

This subsection applies only to response actions conducted after February 15, 2001.

(c) Effect on Federal laws

Nothing in this section affects any liability or response authority under any Federal law, including—

(1) this chapter, except as provided in subsection (b) of this section;

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

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

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

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

(Pub. L. 96-510, title I, §128, as added Pub. L. 107-118, title II, §231(b), Jan. 11, 2002, 115 Stat. 2375.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1)(A), (B), (2)(B)(i) and (c)(1), was in the original “this Act”, meaning Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (c)(2), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (c)(3), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Toxic Substances Control Act, referred to in subsec. (c)(4), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (c)(5), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

SUBCHAPTER II—HAZARDOUS SUBSTANCE
RESPONSE REVENUE

PART A—HAZARDOUS SUBSTANCE RESPONSE
TRUST FUND

**§§ 9631 to 9633. Repealed. Pub. L. 99-499, title V,
§ 517(c)(1), Oct. 17, 1986, 100 Stat. 1774**

Section 9631, Pub. L. 96-510, title II, § 221, Dec. 11, 1980, 94 Stat. 2801; Pub. L. 99-499, title II, § 204, Oct. 17, 1986, 100 Stat. 1696, provided for establishment of a Hazardous Substances Superfund, so redesignated by section 204 of Pub. L. 99-499. See section 9507 of Title 26, Internal Revenue Code.

Section 9632, Pub. L. 96-510, title II, § 222, Dec. 11, 1980, 94 Stat. 2802, limited liability of United States to amount in Trust Fund.

Section 9633, Pub. L. 96-510, title II, § 223, Dec. 11, 1980, 94 Stat. 2802, contained administrative provisions.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 99-499 effective Jan. 1, 1987, see section 517(e) of Pub. L. 99-499, set out as an Effective Date note under section 9507 of Title 26, Internal Revenue Code.

PART B—POST-CLOSURE LIABILITY TRUST FUND

**§ 9641. Repealed. Pub. L. 99-499, title V, § 514(b),
Oct. 17, 1986, 100 Stat. 1767**

Section, Pub. L. 96-510, title II, § 232, Dec. 11, 1980, 94 Stat. 2804, provided for establishment of the Post-closure Liability Trust Fund in the Treasury of the United States.

EFFECTIVE DATE OF REPEAL

Pub. L. 99-499, title V, § 514(c), Oct. 17, 1986, 100 Stat. 1767, provided that:

“(1) IN GENERAL.—The amendments made by this section [repealing this section and sections 4681 and 4682 of Title 26, Internal Revenue Code] shall take effect on October 1, 1983.

“(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Oct. 17, 1986] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of this section is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.”

SUBCHAPTER III—MISCELLANEOUS
PROVISIONS

§ 9651. Reports and studies

**(a) Implementation experiences; identification
and disposal of waste**

(1) The President shall submit to the Congress, within four years after December 11, 1980, a comprehensive report on experience with the implementation of this chapter including, but not limited to—

(A) the extent to which the chapter and Fund are effective in enabling Government to respond to and mitigate the effects of releases of hazardous substances;

(B) a summary of past receipts and disbursements from the Fund;

(C) a projection of any future funding needs remaining after the expiration of authority to collect taxes, and of the threat to public health, welfare, and the environment posed by the projected releases which create any such needs;

(D) the record and experience of the Fund in recovering Fund disbursements from liable parties;

(E) the record of State participation in the system of response, liability, and compensation established by this chapter;

(F) the impact of the taxes imposed by subchapter II¹ of this chapter on the Nation's balance of trade with other countries;

(G) an assessment of the feasibility and desirability of a schedule of taxes which would take into account one or more of the following: the likelihood of a release of a hazardous substance, the degree of hazard and risk of harm to public health, welfare, and the environment resulting from any such release, incentives to proper handling, recycling, incineration, and neutralization of hazardous wastes, and disincentives to improper or illegal handling or disposal of hazardous materials, administrative and reporting burdens on Government and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this chapter. In preparing the report, the President shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection, the President shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this chapter, including but not limited to recommendations concerning authorization levels, taxes, State participation, liability and liability limits, and financial responsibility provisions for the Response Trust Fund and the Post-closure Liability Trust Fund;

(H) an exemption from or an increase in the substances or the amount of taxes imposed by section 4661 of title 26 for copper, lead, and zinc oxide, and for feedstocks when used in the manufacture and production of fertilizers, based upon the expenditure experience of the Response Trust Fund;

(I) the economic impact of taxing coal-derived substances and recycled metals.

(2) The Administrator of the Environmental Protection Agency (in consultation with the Secretary of the Treasury) shall submit to the Congress (i) within four years after December 11, 1980, a report identifying additional wastes designated by rule as hazardous after the effective date of this chapter and pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] and recommendations on appropriate tax rates for such wastes for the Post-closure Liability Trust Fund. The report shall, in addition, recommend a tax rate, considering the quantity and potential danger to human health and the environment posed by the disposal of any wastes which the Administrator, pursuant to subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980 [42 U.S.C. 6921(b)(2)(B) and 6921(b)(3)(A)], has determined

¹ See References in Text note below.