95-1129 ENR

CRS Report for Congress

Superfund Reauthorization Bills: A Comparison of S. 1285, Subcommittee-Approved H.R. 2500, and H.R. 228

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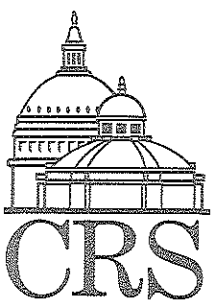
November 17, 1995



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Superfund Reauthorization Bills: A Comparison of S. 1285, Subcommittee-Approved H.R. 2500, and H.R. 228

SUMMARY

This report compares three comprehensive bills to amend and extend the Superfund law. Two are chairmen's bills: S. 1834, introduced by Senator Bob Smith, and H.R. 2500, introduced by Representative Michael G. Oxley, and approved November 9, 1995, by the Subcommittee on Commerce, Trade, and Hazardous Materials of the House Commerce Committee. The third bill is H.R. 228, introduced by Representative John D. Dingell.

The report divides the provisions of the bills into the following topics: community participation, environmental justice, health, State role, voluntary cleanup and brownfields, exemptions from liability for financial institutions and landholders, selection of remedial actions, liability allocations, Federal facilities, natural resources damage assessment, appropriations, miscellaneous, and amendments to the Solid Waste Disposal Act. The Environmental Insurance Resolution Fund, addressed only by H.R. 228, is discussed at the end.

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Superfund Reauthorization Bills: A Comparison of S. 1285, Subcommittee-Approved H.R. 2500, and H.R. 228

INTRODUCTION

Superfund reauthorization is perhaps the highest profile environmental legislation to be considered in the 104th Congress. The chairmen's bills are S. 1834, introduced September 29, 1995, by Senator Bob Smith, chairman of the Environment and Public Works Committee's Subcommittee on Superfund, Waste Control, and Risk Assessment; and H.R. 2500, introduced October 18, 1995, by Representative Michael G. Oxley, chairman of the Commerce Committee's Subcommittee on Commerce, Trade, and Hazardous Materials. The subcommittee reported H.R. 2500 on November 9, 1995.

A third comprehensive proposal in the debate is H.R. 228, based on the bill that was reported in the last Congress by three committees, but was never debated on the floor. It was introduced by Representative John D. Dingell, the former chairman of the Energy and Commerce Committee, on January 4, 1995.

This report provides a section-by-section comparison of those three bills. It is generally organized according to the Senate bill. To assist the reader locate provisions of H.R. 2500, a guide to the sections is presented below. In a few instances the same provisions appear in two places.

GUIDE TO SECTIONS OF H.R. 2500

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COMMUNITY PARTICIPATION			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Community Organizations	§101 amends CERCLA §117(e). Community Response Organizations. Provides for establishing Community Response Organizations (CROs) for facilities on National Priorities List (NPL) or on State Registries if proposed for NPL. Members are appointed by Administrator. Requires EPA to inform and consult with CROs and to consider their views in developing and implementing the remedial action plan. Exempts CROs from requirements of the Federal Advisory Committee Act (FACA, 5 USC App. 2). EPA provides administrative and technical services and meeting facilities for CROs. CROs and EPA inform the community at large.	§104 adds new CERCLA §117(g). Provides for establishing Community Assistance Groups (CAGs) which are similar to CROs. Requires that CAG recommendations for resource use consider cleanup criteria in §121(b) which ensure remedial action will protect human health from realistic and significant risks. Does not authorize CAGs for facilities on State Registries or exempt them from FACA.	§102 adds new §117(g). Provides for establishing Community Working Groups (CWGs) which are similar to CROs. Emphasizes how to weigh CWG views about future land use and requires that CWG recommendations consider cleanup criteria in §121(b). Does not exempt CWGs from FACA. Citizen Information and Access Offices help Administrator select CWG members.
Technical Assistance Grants (TAGs)	§101 adds CERCLA §117(f). Technical Assistance Grants. Similar to current law, authorizes grants up to $50,000 for a citizen group affected by a facility on the NPL to obtain technical assistance in interpreting information. Also authorizes grants for facilities on State Registries. CROs are preferred recipients. Eliminates fund-matching requirement. Authorizes early disbursement of grant portion. Requires limits on grant duration. Limits total funding to 2% of Superfund. Prohibits use of funds to collect field data.	§103 amends CERCLA §117(e). Similar to S. 1285, except provides no authority for grants to communities near facilities on State Registries and limits total funding to $20 million annually. §104 limits eligibility for Technical Assistance Grants (TAGs) to CAGs where they exist.	§101 amends §117(e). Similar to S. 1285, except CWGs are not preferred recipients and the limit on total funding is 4% of Superfund. Also authorizes grants to nonprofit organizations and citizen groups to enhance participation in consensus-based rulemaking processes under CERCLA.

COMMUNITY PARTICIPATION			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Public Participation in Decision Making	§101 adds §117(g). Improvement of Public Participation in the Superfund Decisionmaking Process. Provides opportunities for public participation in meetings throughout response activities, including lengthy removal actions that obviate need for long-term remedial action. Requires two-way communication of information, active solicitation of public views, and public access to all nonprivileged information relating to a facility. Directs EPA to ensure communication about risks conforms to specified standards. Requires written responses to significant concerns.	§103 adds new §117(f). Similar to S. 1285, but does not require public participation during lengthy removal actions that obviate need for long-term remedial action.	§101 adds new §117(f). Similar to S. 1285.
Citizen Information and Access Offices	No comparable provision.	No comparable provision.	§102 adds new §117(h). Establishes a Citizen Information and Access Office in each State to inform citizens about listed sites, the decision-making process under CERCLA, and their legal rights. Serves as an information clearinghouse and repository for facility and health data.
Public Comment	No comparable provision.	No comparable provision.	§612 reaffirms EPA's obligation to fully consider and respond to public comments.

ENVIRONMENTAL JUSTICE			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Environmental Justice	No comparable provision.	No comparable provision.	§102 adds new §117(i). Requires EPA study of priority setting, response actions, and public participation at sites to determine whether conduct was fair and equitable with respect to population, race, ethnicity, and income characteristics of affected communities and to identify program areas needing improvement; any needed improvements must be addressed. Also see §103 below on hazard ranking.
Hazard Ranking	No comparable provision.	§105 amends CERCLA §105. Requires placing the highest priority on facilities where there is actual ongoing human exposure of public health concern or demonstrated adverse health effects.	§103 amends CERCLA §105. Same as H.R. 2500. Also requires grouping of facilities that expose the same population, and considering exposures resulting from subsistence and other special resource uses. Requires evaluating 5 facilities in each EPA region in areas of environmental justice concern that are likely to warrant inclusion on the NPL. Establishes petition process to evaluate such facilities. Requires review and incorporation in the National Contingency Plan (NCP) of new procedures to conduct efficient, cost-effective, and timely remedial investigation and feasibility studies (RI/FS).
Worker Training	No comparable provision.	No comparable provision.	§113 authorizes an EPA demonstration program to recruit and train individuals from affected communities in remediation activities.

ENVIRONMENTAL JUSTICE			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Study of Small Disadvantaged Business Goals	No comparable provision.	No comparable provision.	§620 requires EPA to study the advisability and feasibility of instituting a small disadvantaged business goal program for all Federal contracts under CERCLA, and report within a year.

HEALTH			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Health Authorities	No comparable provision.	§111 amends §104(i)(15). Authorizes ATSDR to delegate its activities to appropriate public authorities, professional associations, institutions, colleges or universities (in addition to States which currently conduct such activities) through grants, cooperative agreements, or contracts.	§110 amends §104(i)(15). Same as H.R. 2500. Also requires consideration of educational institutions that primarily serve minorities or represent the interests of affected communities. §112 amends §111(c)(4) to authorize ATSDR provision of health services.
Substance Profiles	No comparable provision.	§101 adds new §127(c). Requires EPA and ATSDR to review the health effects values and toxicological profiles of 25 carcinogens listed in §104(i) that present the most risk at NPL sites. Within 2 years of enactment, after peer review and public comment, a final assessment of the health effects values must be published. Requires presenting and explaining plausible alternative assumptions or models. If numerical estimates of risk or health effects values are provided, requires including central estimates using the most plausible assumptions, given the weight of the scientific information available, and a range of estimates and related uncertainties.	§105 amends 104(i)(3). Directs ATSDR to prepare toxicological profiles for substances not on the priority list but which have been found at non-NPL facilities and are of critical health concern. Removes requirement for revising and republishing toxicological profiles at least every 3 years.

HEALTH			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Health Care for NPL Communities	No comparable provision.	§106 amends §104(i)(1). Eliminates NPL community eligibility for admission to Public Health Service facilities and services, but makes exposed persons eligible for referral to accredited medical care providers. §111 amends §104(i)(15). Directs ATSDR to provide diagnostic services, health data registries, and preventative health education to communities at NPL sites and sites being evaluated for inclusion on the NPL.	§104 amends §104(i)(1). Same as H.R. 2500 §106. §110 amends §104(i)(15). Same as H.R. 2500 §111.
Determining Health Effects	No comparable provision.	§107 amends §104(i)(5). Authorizes conduct of health effect studies by ATSDR directly or by cooperative agreements and grants with institutions. Requires additional studies to develop new techniques for predicting toxicity.	§106 amends §104(i)(5). Same as H. R. 2500.
Public Health Assessments at NPL Facilities	No comparable provision.	§108 amends §104(i)(6). Requires ATSDR to perform a public health assessment for each facility on the NPL and for sites proposed for the NPL, including Federal facilities. Requires the President to provide ATSDR with the necessary data and information for public health assessments prior to initiation of remedial actions. Requires community involvement in health assessments. §109 amends §104(i)(7). Requires conduct of human health studies "of exposure or other health effects" when appropriate.	§107 amends §104(i)(6). Similar to H.R. 2500 §108. §108 amends §104(i)(7). Same as H.R. 2500 §109.

HEALTH			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Education	No comparable provision.	§110 amends §104(i)(14). Requires additional ATSDR outreach to nurses, medical centers, and the public addressing health effects related to exposure to hazardous substances.	§109 amends §104(i)(14). Same as H.R. 2500.
Disease Registry	No comparable provision.	§106 amends CERCLA § 104(i)(1). Removes requirement for a national registry of diseases and illnesses. Specifies that the national registry of persons exposed to hazardous substances is for scientific and public health purposes.	§104 amends §104(i)(1). Same as H.R. 2500.
Effective Date	No comparable provision.	§115 makes title I requirements effective on the date of enactment at facilities where no final record of decision has been published.	§114 makes title I requirements effective on the date of enactment, except requirements of CERCLA §117(f)(1) through (4) and §117(g)(1), as added by §§101 and 102, which become effective 180 days after enactment.

STATE ROLE			
Provision	S. 1285	H.R.2500 (Subcommittee-Approved)	H.R. 228
Delegation of Authority	§201 adds a new §135 to CERCLA. §135(c) provides that on application by a State, the Administrator of EPA shall delegate 1 or more authorities with respect to 1 or more non-Federal listed facilities in the State. Applications shall identify each facility for which delegation is requested and may request delegation of one or more of 6 categories of delegable authority identified in §135(b).	§501 adds a new §131 to CERCLA. §131(a) provides that the Administrator may delegate authority to a State to take action at any or all NPL sites within the State, including Federal facilities. Delegation may be made with respect to one or more of 8 categories of authority.	§201 adds a new §127 to CERCLA. Authority is not delegated. Rather, §127(a) provides that, on application by a State, the Administrator may enter into a contract or cooperative agreement with a State allowing the State to take or require preremedial actions (including removal actions) and response actions, including selection and enforcement of remedial actions and the use of allocation procedures. Only non-Federally owned or operated facilities are covered under this section (although §207, described below, provides separate authority for States at Federal facility sites). The Administrator is required to conduct a study (under §206) of the feasibility of authorizing States to use their own laws to carry out the provisions of the Act in lieu of the Federal program.
Approval/Denial	§135(c). The Administrator shall approve or deny an application within 60 days of submittal if the State is authorized to administer and enforce the RCRA corrective action program, or within 120 days if it is not. An application may be denied if the State does not have adequate legal authority, financial and personnel resources, organization, or expertise. If the Administrator fails to approve or disapprove an application within the required time, an application shall be deemed approved.	§131(a)(3). Similar approval and disapproval procedures, except that the deadline for approval or disapproval is within 60 days of submittal for all States.	§127(b)-(c) set forth similar requirements concerning the authorities a State must demonstrate in order to qualify for a contract or cooperative agreement. In addition, in order for a State to qualify for a contract or cooperative agreement at a facility, the State may not be a major potentially responsible party with respect to that facility. No deadline for EPA approval of State applications, except, as noted below, in the case of authority at Federal facilities.

STATE ROLE			
Provision	S. 1285	H.R.2500 (Subcommittee-Approved)	H.R. 228
Performance of Delegated Authorities	§135(d). A delegated State shall have sole authority to perform a delegated authority with respect to a delegated facility, except that delegated States may also enter into agreements with political subdivisions, interstate bodies, and other delegated States for the performance of delegated authority.	§131(c)(3). The President is prohibited from taking response actions at any facility for which authority has been delegated to a State. No provision concerning State agreements with political subdivisions, interstate bodies, and other delegated States.	No comparable provision.
Contract Provisions	No comparable provisions.	No comparable provisions.	§127(d)-(g). Establishes specific provisions for State contracts and cooperative agreements with regard to selection of remedial actions, enforcement, allocation of liability, orphan shares, covenants precluding administrative and judicial actions, failure to comply with contracts or cooperative agreements, and required contract terms.
Costlier Remedial Actions	§135(d)(3)(B)(ii). A delegated State may select a remedial action with a greater response cost than that which would have been chosen by the Administrator if the State pays for the difference in cost. The State shall not be entitled to seek cost recovery from any other person for the additional cost.	No comparable provision.	No comparable provision.

STATE ROLE			
Provision	S. 1285	H.R.2500 (Subcommittee-Approved)	H.R. 228
Cost Share	No comparable provision.	§501(b). Deletes the requirement that States provide a 50% cost share in cases where the State or a political subdivision operated the site at which a response is to be undertaken, effectively lowering the cost share requirement in these cases to 10%. Also provides that, upon receipt of a petition from a State, the Director of OMB shall establish a lower State cost share to apply in lieu of the 10% requirement, using a methodology specified in the subsection. OMB may take such action not more frequently than every 3 years. Cost share requirements shall not apply in the case of remedial actions to be taken on land held by Indian tribes.	§202. Changes the State cost share requirement for all response actions entered into after the date of enactment to 15%.
Judicial Review of §106 Orders	§135(d)(4). Orders issued by delegated States under §106 of CERCLA (concerning imminent and substantial endangerment) shall be subject to judicial review.	No comparable provision.	No comparable provision.
Delisting	§135(d)(5). Authorized States may remove all or part of a designated facility from the NPL. EPA may not relist any facility so removed.	§131(b)(3). Similar authority, but no prohibition on further Federal actions. Facilities delisted from the NPL may be relisted if cleanup is not completed in accord with the enforceable agreement.	No comparable provision.
Federal Responsibilities and Authorities	§135(e). The Administrator shall review annual certifications by the States concerning the use of funds, may seek reimbursement of funds misapplied or misused, may withdraw program delegation, and may perform emergency removals in delegated States.	§131(c). Similar provisions, except for emergency removal authority. The President is specifically prohibited from taking any response or removal action at facilities where such authority has been delegated to the State.	§127(g). If a State fails to comply with a requirement of a contract or cooperative agreement, the Administrator may seek in court to ensure performance or to recover funds advanced. No prohibition on Federal actions in States with contracts or agreements.

STATE ROLE			
Provision	S. 1285	H.R.2500 (Subcommittee-Approved)	H.R. 228
Funding	§135(f). The Administrator shall provide grants to delegated States to carry out programs under this section. Nine factors to be considered in determining the amount of such grants are specified. Grant money may not be used to pay the State share of response costs required under §104(c)(3) of CERCLA.	§131(d). Similar provisions.	No comparable provision, although EPA does provide funding to States under CERCLA contracts and cooperative agreements.
Non-NPL Facilities	§135(h). A determination that a response action at a non-NPL facility is complete under State law is final and shall not be subject to further response action under any Federal law, unless the Administrator determines that an emergency removal is necessary.	No comparable provision.	No comparable provision.
Reimbursements	No comparable provision.	§503. Amends §123 of CERCLA to authorize reimbursement of States up to $50,000 for expenses incurred in carrying out a removal action after the date of enactment and to add "cleanup of illicit drug laboratories" to the list of emergency response actions for which State and local governments may be reimbursed. The amounts allowed for State and local governments may not be combined for any single response action.	§619. Similar provisions. No State may receive more than $2 million per year under this section.
Federal-Lead Sites	No comparable provision.	No comparable provision.	§128(b). Provides that the Administrator shall not delegate authority to a State in cases where EPA has served as the lead agency for a facility.

STATE ROLE			
Provision	S. 1285	H.R.2500 (Subcommittee-Approved)	H.R. 228
Siting	No comparable provision.	No comparable provision.	§203. Effective 1 year after the date of enactment, the President shall not provide any remedial action in a State unless it submits a report describing its plans for adequate treatment, storage, and disposal capacity for hazardous waste generated within the State.
State Registries	No comparable provision.	No comparable provision.	§204 requires States to establish public lists of facilities believed to present a current or potential hazard to human health or the environment due to the release or threatened release of hazardous substances, and to update them annually.
Federal Facilities (continued on next page)	S. 1285 does not provide for delegation to the States of authority over response actions at Federal facilities.	H.R. 2500 does not distinguish between Federal and non-Federal facilities in establishing procedures or authority for State delegation.	§207 provides separate authority for EPA to enter into contracts or cooperative agreements with States concerning response actions at Federal facilities, including authority for States to publish deadlines for completion of remedial investigations and feasibility studies, review and select remedies, and enter into agreements with departments, agencies and instrumentalities of the United States and consent decrees with other PRPs. Sets deadlines and criteria for approval or disapproval of an application, provisions for withdrawal of authority, and procedures for enforcement of inter-Agency agreements and resolution of inter-Agency disputes between authorized States and Federal agencies, departments and instrumentalities.

STATE ROLE			
Provision	S. 1285	H.R.2500 (Subcommittee-Approved)	H.R. 228
Federal Facilities (continued from previous page)	No comparable provision.	§102 adds §121(o). The President must extend to States within 50 miles of DOE facilities the same opportunity for review and comment regarding response actions that are provided to States in which the facilities are located.	§205(a). Similar provision. Applies to any Federal facility, not just those of DOE.
Limitation on Enforcement for States Implementing Certain Remedial Action Plans	No comparable provision.	§304. Prohibits enforcement actions under CERCLA for any aspect of a remedial action being undertaken at a site pursuant to an EPA-approved State plan. State plans shall be approved unless the President finds that the State does not have the legal authority and financial and personnel resources, organization, and expertise to carry out a remedial action. Procedures are established for withdrawing approval.	No comparable provision.
Indian Tribes	No comparable provision.	No comparable provision.	§205(b). Treats Indian tribes substantially the same as States for the purposes of contracts and cooperative agreements, voluntary response actions, and involvement in the initiation, development, and selection of remedial actions.
	No comparable provision.	§501(b). Cost share requirements shall not apply in the case of remedial actions to be taken on land held by Indian tribes.	No comparable provision.

VOLUNTARY CLEANUP AND BROWNFIELDS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Elements of Voluntary Programs	§301(b) establishes a new §133 of CERCLA. EPA shall provide assistance to States to establish and expand voluntary response programs. Establishes elements of a qualifying State voluntary cleanup program. Programs must ensure that, if the person conducting a voluntary response fails to complete it, the necessary response activities are completed.	§ 301 (c) establishes a new §130 of CERCLA. Similar provision.	§301 establishes a new §128 of CERCLA. Similar provision.
Funding	§301(c). Provides that not less than 2% and not more than 5% of the amount available in the Fund for the five years after enactment shall be distributed to qualifying States for assistance in establishing and administering voluntary programs. Amounts of assistance shall be determined by the proportion of total CERCLIS sites in each State.	No comparable provision.	§706. Authorizes not more than $20 million for each of fiscal years 1996-2000 for the purposes of technical, financial, or other assistance to States for voluntary cleanup programs.

VOLUNTARY CLEANUP AND BROWNFIELDS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
State Certification and Annual Reporting	No comparable provision.	No comparable provision.	§128(d), (e), and (j). At any time after enactment, a State may submit for review by the Administrator documents the State deems appropriate to describe its voluntary response program, together with a certification that the program is consistent with the elements set forth in §128(c). A State voluntary response program shall be a qualified program 120 days after submittal of certification, unless the Administrator determines before that date that the State's submittal is not consistent with §128(c). Also establishes procedures for withdrawal and reinstatement of approval. At the end of each calendar year, States with qualified programs shall report to the Administrator on the status of their programs, including a statement regarding whether the program continues to be consistent with the elements set forth in §128(c). The Administrator shall report annually to the Congress on the status of State voluntary response programs.

VOLUNTARY CLEANUP AND BROWNFIELDS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
NPL Listing	No comparable provision.	No comparable provision.	§128(f). No portion of a facility subject to a response action plan approved under a qualified program under this section shall be proposed for listing on the National Priorities List as long as substantial and continual response activities are being undertaken to complete the response action in a timely manner. The Administrator's ability to list on the NPL facilities that have been proposed for listing or to compel response action under §106 is not limited by this section.
Waivers	No comparable provision.	No comparable provision.	§128(g). The Administrator shall promulgate regulations under which States with qualified voluntary response programs may waive permit requirements with respect to voluntary cleanups.
Effect on Liability	No comparable provision.	No comparable provision.	§128(h) and (k)(2). The performance of a voluntary cleanup shall not constitute an admission of liability. Also, this section is not intended to affect the liability of any person or to affect other response authorities afforded under any law or regulation relating to environmental contamination, except that the successful completion of a voluntary response action under this section shall be considered as evidence that a person acquiring ownership of the facility is a bona fide prospective purchaser within the meaning of §101(39) of CERCLA.

VOLUNTARY CLEANUP AND BROWNFIELDS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Compliance with NCP	No comparable provision.	No comparable provision.	§128(i). Voluntary response actions under qualified programs shall be presumed to be consistent with the NCP for purposes of private cost recovery claims under CERCLA.
Statutory Construction	No comparable provision.	No comparable provision.	§128(k)(1) and (3). This section is not intended to impose any requirement on a State voluntary response program. Nothing in this section shall be construed to require any person to participate in a voluntary response program in order to qualify as a bona fide purchaser.
Brownfields Defined	§302 (establishes new § 134 of CERCLA). Defines "brownfield facility" as a parcel of commercial or industrial land, the expansion or redevelopment of which is complicated by the potential presence of a hazardous substance, but excludes facilities subject to removal actions under CERCLA, facilities on the NPL, facilities subject to corrective action under RCRA, facilities being closed under RCRA, facilities subject to administrative orders or consent decrees, Federal facilities, and facilities for which cleanup assistance has been provided under the LUST Trust Fund.	No comparable provision.	No comparable provision.
Brownfield Cleanup Assistance Program	§134(b). The Administrator shall establish a program to provide 10-year interest-free loans to local government entities and Indian tribes for site characterization of brownfield facilities.	No comparable provision.	No comparable provision.

VOLUNTARY CLEANUP AND BROWNFIELDS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Brownfield Funding	§134(b)(3). $15 million is authorized to be appropriated from the Fund in each of the five years after enactment for interest-free loans.	No comparable provision.	No comparable provision.
Brownfield Maximum Amount	§134(b)(4). Loans per facility may not exceed $100,000 in each fiscal year, or $200,000 in total.	No comparable provision.	No comparable provision.
Brownfield Loan Applications	§134(c). Establishes requirements for loan applications and procedures for approval.	No comparable provision.	No comparable provision.

EXEMPTIONS FROM LIABILITY FOR FINANCIAL INSTITUTIONS AND LANDHOLDERS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Treatment of Security Interest Holders and Fiduciaries	§ 303(a). Clarifies the definition of "owner or operator" for determining cleanup liability, to more clearly exclude holders of indicia of ownership who hold such indicia primarily to protect their security interest, but do not exercise responsibility for the handling of hazardous substances on the vessel or facility.	§302(a). Similar provision.	No comparable provision.
	§303(b). Adds §107(n) to CERCLA to clarify that the liability of a fiduciary for a release or threatened release may not exceed the assets held by the fiduciary to indemnify the fiduciary. Also clarifies that a fiduciary shall not be liable for undertaking or directing another to undertake a response action, unless the fiduciary fails to exercise due care and the failure causes or contributes to the release of a hazardous substance.	§302(b). Adds §107(p) to CERCLA. Similar provisions.	§606 clarifies that the personal obligations and liabilities of a fiduciary shall be limited to the extent to which the assets of the trust or estate are sufficient to indemnify the fiduciary, unless: 1) the obligations and liabilities would have arisen even if the person had not served as fiduciary; 2) the fiduciary's own failure to exercise due care caused or contributed to the release following establishment of the trust, estate, or fiduciary relationship; 3) the fiduciary had a role in establishing the trust, estate, or fiduciary relationship, and the trust, estate, or fiduciary relationship has no objectively reasonable purpose apart from the avoidance or limitation of liability under this Act; or 4) the fiduciary has not complied with such other requirements as the Administrator may set forth by regulation. Also clarifies that a fiduciary shall not be personally liable for undertaking or directing another to undertake a response action under section 107(d)(1).
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EXEMPTIONS FROM LIABILITY FOR FINANCIAL INSTITUTIONS AND LANDHOLDERS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Treatment of Security Interest Holders and Fiduciaries (continued from previous page)	§303(b). Adds §107(o) to CERCLA to clarify that a lender's liability shall be limited to the excess of the fair market value of a vessel or facility on the date on which the liability is determined, over the fair market value on the date 180 days before the response action was initiated, if a vessel or facility was acquired through foreclosure, or is held under the terms of an extension of credit. Liability is not limited, however, if the lender causes or contributes to the threatened release of a hazardous substance.	§302(b). Adds §107(q) to CERCLA. Similar provisions, except that liability is limited to what is called "actual benefit," defined as the net gain realized on the sale of property less acquisition, holding, and disposition costs.	No comparable provision.
Federal Banking and Lending Agency Liability	§304. Amends the Federal Deposit Insurance Act to provide that a Federal banking or lending agency shall not be liable under any law imposing strict liability, for the release or threatened release of a hazardous substance from a vessel or facility acquired in connection with the exercise of receivership, the provision of a loan or guarantee, or received as the result of an enforcement action, unless the Agency causes or contributes to the threatened release. Also exempts first subsequent purchasers of such vessels or facilities except in four specified circumstances.	§701 amends §101(20), the definition of "owner or operator", to exclude the U.S., any U.S. department, agency, or instrumentality, or a conservator or receiver appointed by the U.S., if (1) the U.S. or the conservator or receiver acquires ownership in connection with the exercise of receivership or liquidation, and in connection with a seizure or forfeiture; and (2) the U.S., conservator, or receiver does not participate in the management of the facility operations that result in a release of hazardous substances.	No comparable provision.

EXEMPTIONS FROM LIABILITY FOR FINANCIAL INSTITUTIONS AND LANDHOLDERS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Contiguous Properties	§305. A person that owns or operates real property contiguous to a vessel or facility at which there has been a release of a hazardous substance and whose property is or may be contaminated by the release shall not be considered liable under the Act. The Administrator may issue an assurance that no enforcement action will be initiated against such person and grant such person protection against a cost recovery or contribution action.	§203 adds a new §107(n) to CERCLA. Similar provisions. In addition, the owner or operator of contiguous property may petition the President to exclude the property from the description of an NPL site, if the property is contaminated solely by ground water that flows under such property and is not used as a source of drinking water.	§403(a). Similar to S. 1285.
Prospective Purchasers and Windfall Liens	§306. As long as a prospective purchaser does not impede the performance of a response action or natural resource restoration and exercises appropriate care with respect to each hazardous substance found at the facility, such purchaser shall not be considered liable for the response costs. If there are unrecovered response costs, however, the United States shall have a lien on the facility or may obtain a lien on other property from the responsible party in an amount not to exceed the increase in fair market value that resulted from the response action.	§305. Similar provision.	§403(a) and (b). Similar provisions.

EXEMPTIONS FROM LIABILITY FOR FINANCIAL INSTITUTIONS AND LANDHOLDERS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Innocent Landholders	§307. Requires that the standards developed by the American Society for Testing and Materials (ASTM) be used to determine whether a defendant qualifies as an innocent landholder as a result of having undertaken all appropriate inquiries into the previous ownership and use of a facility. Authorizes the Administrator of EPA to issue alternative standards and includes a list of 10 considerations to be included in such regulations.	§303. Similar provision. Contains a slightly different list of considerations to be included by the Administrator in any regulations.	No comparable provision.

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Definitions for Selection of Remedy	§401 adds new definitions to CERCLA §101: "actual or planned or reasonably anticipated future use of the land and water resources"; "significant ecosystem"; "valuable ecosystem"; "sustainable ecosystem"; "ecological resources"; and "significant risk to ecological resources that are necessary to the sustainability of a significant ecosystem or valuable ecosystem".	No comparable provision.	No comparable provision.
Cleanup Levels (continued on next page)	§402 establishes new §121(a) and (b). §121(a)(1). Most Cost-Effective Remedial Action. Requires the EPA Administrator to select a remedial action that is the most cost-effective means of achieving the goals of protecting human health and the environment. Human health is deemed to be protected if, considering the expected exposures associated with future land or water use, the remedial action achieves a residual risk from 1) exposure to carcinogenic contaminants such that cumulative lifetime additional cancer risk is in the range of 10^{-4} to 10^{-6} for the affected population, and 2) exposure from noncarcinogens does not pose an appreciable risk of deleterious effects. The environment is deemed to be protected if the remedial action will protect against significant risks to ecological resources needed to sustain a significant or valuable ecosystem and will not interfere with a sustainable functional ecosystem.	§102 replaces §121. General Standards. §121(a)-(b) requires the President to select remedial actions needed to protect human health and the environment from realistic and significant risks through cost-effective and cost-reasonable means. Remedies must prevent actual ingestion of drinking water containing substances exceeding drinking water standards, or if no such standard exists, exceeding levels necessary to protect public health from realistic and significant risks. For non-threshold carcinogens, a remedy is deemed protective if the remedy limits the lifetime additional cancer risk from exposure to hazardous substances to within the range of 10^{-4} to 10^{-6} for the affected population, based on actual or reasonably anticipated future land, water, and other resource uses. Actual exposure data are to be used where obtainable. Where estimates are used, protective levels are to be based at the 90th percentile of the exposure probability distribution. For exposure parameters based on assumptions, the most plausible assumptions are to be used.	§501 creates new §121(d), Establishment of Protective Concentration Levels. New §121(d)(1). National Goals. To provide consistent and equivalent protection of health and the environment to all communities, EPA must promulgate, through a negotiated rulemaking process, national goals that are to be applied to all remedial actions. National goals for human health must be expressed as a single numerical level for carcinogens (not a range as under current regulations) and a single level for noncarcinogens. The national goals are to provide the basis for protective concentration levels, unless achieving the goals is technically infeasible or unreasonably costly. §121(d)(7)(C). The goal is to restore ground water and surface water that may be used for drinking to: 1) maximum contaminant levels (MCLs) or to [stricter] non-zero maximum contaminant level goals (MCLGs) set under the Safe Drinking Water Act (SDWA); and 2) protective concentration levels.

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Cleanup Levels (continued from previous page)		A remedy is deemed protective to the environment if, based on future resource uses, the remedial action will protect against realistic and significant risks to resources necessary to the sustainability of a significant ecosystem. Remedial actions must meet State standards for point source discharges.	§502 amends §121(b)(4). At a minimum, ground water remedies must prevent actual ingestion of drinking water containing substances exceeding MCLs or MCLGs, prevent exposure to any other contaminants in excess of levels necessary to protect human health, prevent impairment of Clean Water Act-designated uses, and assure containment.

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Remedy Selection Criteria	§402 amends §121(a)(1)(C). Requires EPA when selecting among alternative remedial actions to balance the following factors equally: effectiveness, reliability, short-term risk, acceptability to the community, and engineering practicability.	§102 amends §121(d)-(f). Directs the President to select appropriate remedial actions using a process that includes: 1) an evaluation of current and anticipated future use of land, water and other resources; 2) a site-specific risk assessment; and 3) a balancing of the following factors: effectiveness of the remedy (including technical practicability), reliability, risks to the affected community, acceptability to the affected community, and reasonableness of costs compared to other remedial options. §121(f)(2) Cost-Effectiveness. The President must demonstrate and certify that the selected remedy represents a cost-effective risk reduction and that the incremental cost is justified and reasonably related to the incremental risk reduction benefits of the remedy. Incremental costs and risk reduction benefits must be compared among significant remedial options and quantified to the extent practicable and appropriate. The President must give preference to the option that adequately protects human health and the environment at the lowest total cost over the life-cycle of the remedy.	§502 amends §121(b). Directs the President to select remedies that are protective of human health and the environment and provide long-term reliability at reasonable cost. Methods of remedy are to be selected using a process that: 1) considers reasonably anticipated future uses of land, and 2) prevents exposures in excess of protective concentration levels by balancing the following factors: effectiveness, long-term reliability, short-term risk, acceptability to the community, and reasonableness of the cost. Other factors for ground water include timeframe, and implementability of the remedy.

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Technical Impracticability	§402 amends §121(a)(2). If EPA finds that protecting human health and the environment is unreasonably costly, EPA must evaluate remedial measures that reduce risks and select a technically practicable remedial action that minimizes risk by cost-effective means. A finding of technical impracticability may be made based on a determination that there in no known or reasonably anticipated reliable means of achieving health and environmental protection goals at a reasonable cost.	§102 amends §121(f) and (j). §121(f). When identifying an appropriate remedial action, the President is to balance technical practicability as well as other factors. §121(j). In evaluating remedies to be selected, the President is to make findings of technical impracticability from an engineering perspective on the basis of projections or modeling without requiring that the remedial measure first be constructed, operated and reviewed, unless projections and analysis are inadequate.	§502 amends §121(d). §121(d)(7)(C) The President may select a remedial action that does not meet the Act's water remediation goals if compliance is technically impracticable from an engineering perspective, or in certain ground water cases, achieving the goal is unreasonably costly. To the extent practicable, the President is to make determinations of technical impracticability on the basis of projections or modeling without requiring that the remedial measure under consideration be first constructed, installed, operated and reviewed, unless projections and analysis are inadequate. The President is to issue guidance for determining technical impracticability from an engineering perspective for use in selecting remedies for contaminated ground water.

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Legally Applicable, Relevant and Appropriate Requirements (ARARs)	§402 adds new §121(a)(5). Effectively eliminates ARARs. A remedial action does not have to meet any standard that would apply under any Federal or State law, except that where hazardous wastes are transferred off-site, such waste must go to a permitted facility under the Solid Waste Disposal Act.	§102 amends §121. Replaces ARARs. §121(b). Remedies must prevent actual ingestion of drinking water containing substances exceeding drinking water standards, or if no such standard exists, exceeding levels necessary to protect public health from realistic and significant risks. §121(k). Procedural requirements of Federal and State standards and requirements, including permitting requirements, do not apply to actions conducted onsite. §121(l). For any facility to which they apply, standards set forth in this section generally govern cleanup, remedy selection and on-site hazardous substance management in lieu of any other Federal, State, or local standards. Air emissions or water discharges resulting from remediation technology must meet State standards unless any of 6 specified exceptions apply. §121(m). In general, any State requirement that would effectively prohibit the land disposal of hazardous substances Statewide does not apply.	§501 adds new §121(d)(7). Revises ARARs. In general, remedial actions must: 1) comply with the substantive requirements of any Federal or more stringent State environmental or facility siting law; 2) meet any stricter protective concentration levels applicable to remedial actions conducted under any State environmental law; and 3) comply with any other State standard or requirement consistently applied to remedial actions under State law. Procedural requirements of Federal and State standards and requirements, including permitting requirements, do not apply to actions conducted onsite. Remedial actions must restore ground water and surface water that may be used for drinking water to maximum contaminant levels or non-zero maximum contaminant level goals (MCLGs) under the Safe Drinking Water Act (SDWA). For substances for which SDWA standards have not been set, protective concentration levels must meet the Act's national goals. 121(d)(8). In general, any State requirement that would effectively prohibit the land disposal of hazardous substances Statewide does not apply.

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Remediation of Contaminated Water	§121(a)(4). Requires remedial actions to protect uncontaminated ground water suitable for humans and livestock. Remedial action decisions must take into consideration actual or planned future use, natural attenuation, and remedy selection criteria in 121(a)(1)(C). There may be no presumption that water suitable for drinking by humans or livestock is the actual or planned or reasonably anticipated future use. Remedial action for protecting uncontaminated ground water may be based on natural attenuation or biodegradation. Remedial action for contaminated ground water may include point-of-use treatment.	§102 adds new §121(b). For water that may be used for drinking water, remedies must achieve drinking water standards; if no standard exists, remedies must achieve levels necessary to protect human health from realistic and significant risks.	§501 amends §121(d)(7)(C). Drinking water. The Act's goal is to restore any surface or ground water that may be used for drinking water to SDWA MCLs or nonzero MCLGs and to protective concentration levels for any other contaminants. §502 amends §121(b)(4). Remedies for ground water generally must: 1) prevent actual ingestion of water containing contaminants in excess of MCLs or non-zero MCLGs; 2) prevent exposure to any other contaminants in excess of levels necessary to protect human health, 3) prevent impairment of surface water designated uses under the Clean Water Act (unless technically impracticable); 4) ensure containment of source areas in ground water. Alternate concentration levels may be set if specified conditions are met (e.g, the remedial action includes monitoring, and enforceable measures to preclude human exposure from any known or projected points of entry of the ground water into surface water. Other ground water. For ground water that cannot be used for drinking water, remedial actions must attain levels appropriate for current and future use, including the use of water to which the contaminated ground water discharges.

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Methods of Remediation: Institutional Controls	§402 adds §121(a)(6). Institutional Controls. Remedial actions that use institutional and engineering controls are to be considered to be on an equal basis with all other alternatives.	§102 creates new §121(c). Method of Remediation. Remedial actions may include treatment, source control, natural attenuation, engineering controls, institutional controls, point of use treatment, provision of alternative water supply or other methods. No preference or bias applies to any method(s). §121(j). Institutional Controls. Whenever a remedial action relies on land or water use restrictions, the President must specify the nature of the restrictions and may ensure that the restrictions are incorporated into a hazardous substance easement (§104(k), see below).	§502 amends §121(b). Methods of Remediation. Remedial actions may include treatment, containment, a combination thereof or another method. For 'hot spots' (areas of relatively high contamination within a facility that could pose significant risks), reasonableness of cost is to be given less consideration and treatment is the preferred remedy. Interim or final containment may be selected in certain circumstances. §121(b)(4) Institutional Controls. Whenever a remedial action relies on restrictions on the use of land, water, or other resources to achieve protection of health and the environment, the President must specify the required restrictions including restrictions on the uses of land and surface water, and on well drilling. The restrictions may be incorporated into a hazardous substance easement (§104(k)).

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Risk Evaluations	§403 adds a new §127. Facility-Specific Risk Evaluations. §127(a). Use. A facility-specific risk evaluation is to be used to: identify the risks posed by a facility; compare the relative protectiveness of alternative potential remedies; and demonstrate that the selected remedial action can achieve goals. The risk evaluation must comply with principles that ensure that future land and water use is considered, and that the evaluation is scientifically objective and includes all relevant data. §127(b). Risk Evaluation Principles. Risk evaluations must be based on plausible estimates of exposure, use facility-specific data or plausible assumptions, and use all relevant and scientifically objective data available, etc. §127(c). Risk Communication Principles. The document reporting the results of the risk evaluation must clearly explain the risks, identify the assumptions and uncertainties, present a range and distribution of risk estimates and exposures, state the size of the population at risk, and compare facility risks with other daily and regulated risks. §127(d). Regulations. EPA must issue regulations that promote realistic risk characterization.	§101 adds a new §127. National Risk Protocol. §127(a). Risk assessments conducted under CERCLA must provide scientifically objective and unbiased risk estimates and characterizations, distinguish scientific findings from other considerations; and be based on relevant and current information, including epidemiological data and site-specific information. §127(b). Guidelines. The President must publish guidelines (after peer review and public comment) that define the use of modeling, identify criteria for selecting transport and fate models, define the use of population and individual risk estimates, define approaches for addressing cumulative risks; establish sampling methods and data quality requirements; and establish procedures for independent and external peer review for significant risk assessments, models or methodologies. The guidelines are to establish protective exposure levels that are set, to the extent feasible, at the 90th percentile of exposure probability distribution. §127(c) directs the President to review the health effects values of the 25 carcinogens that pose the greatest risk at NPL sites and to publish an assessment of the values.	§501. National Risk Protocol. Amends §121(d)(2). Requires EPA to promulgate a national risk protocol for conducting CERCLA risk assessments for use in determining need for remedial action, in setting protective concentration levels (PCLs) of chemicals, and in evaluating remedial alternatives. The protocol's goal is to promote realistic risk assessments. The protocol is to establish: standardized exposure scenarios for a range of land uses, and standardized methodologies for evaluating exposure pathways and developing PCLs for the 100 contaminants most often found at facilities. Standardized methodologies must include national constants for chemicals, facility-specific variables, and exposure factors. The President must conduct a risk analysis at each facility using standardized methodologies, or if not available, using facility-specific risk assessments. In developing the protocol, EPA is to identify toxicity information sources, define the use of probabilistic modeling, identify criteria for using models, define the use of high end and central exposure cases and assumptions, etc. The protocol must set guidelines for risk assessments and for setting PCLs which protect at the 90th exposure percentile of the affected population.

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Lead		§101 adds new §127(e) directing EPA to conduct a lead-in-soils policy review. §102 adds new §121(p). In selecting remedies or predicting blood lead levels, the President may not use models concerning lead uptake unless data or projections are reconciled with empirical data from residents.	
Future Land and Water Use	§403 adds §127(e). As part of the facility-specific risk evaluation prepared for use in selecting a remedy, EPA must determine the actual or planned or reasonably anticipated future use of the land and water resources at a facility by consulting the community response organization, facility owners and operators, PRPs, and local officials.	§102 amends §121(d) to require that when selecting a remedy, the President must take into account the current and reasonably anticipated future uses of land, water, and other resources at a facility. A list of factors to be considered in identifying anticipated future use must generally include the following: any consensus recommendation of the Community Assistance Group and views of the affected community; historical land, water, and other resources of the facility and surrounding properties, current uses of the facility and surrounding properties, recent development patterns in the areas and population projections; Federal, State and local land use designations or zoning; potential for economic redevelopment; and availability of alternative sources of drinking water.	§502 amends §121(b) to require that when selecting a remedy, the President must take into account the reasonably anticipated future uses of land at a facility. In doing so, the President is to consider factors including: consensus recommendations of the Community Working Group (and redevelopment authority in the case of a Federal facility scheduled for closure); land use history of the facility and surrounding properties, and recent development patterns and population projections; Federal or State land use designations, including parks, recharge areas designated in ground water or surface water protection plans; current local zoning and land use plans; potential for economic redevelopment; proximity to residences, sensitive populations or ecosystems, etc; and property owners' plans for the facility. §121(d)(7)(C). For contaminated ground water not used for drinking water, remedial actions must meet levels appropriate for reasonably anticipated future use of the ground water (with exceptions).

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Presumptive (or Generic) Remedial Actions	§403 adds new §128. Presumptive Remedial Actions. §128(a) requires EPA, within 1 year, to issue a rule establishing presumptive remedial actions for common types of facilities with well understood contamination and exposure problems. §128(b). Presumptive remedies must have been shown to be technically practicable and cost-effective methods of protecting human health and the environment. §128(c). EPA may issue various presumptive remedial actions based on circumstances. §128(d). Presumptive actions may include institutional and engineering controls. §402 adds §121(a)(3). A remedial action that implements a presumptive remedial action under §128 is considered to meet the goals of protecting human health and the environment. §404 adds §129(a)(2). EPA or a PRP may propose a presumptive remedial action for a facility after conducting a facility evaluation. However, EPA may not require a PRP to implement a presumptive remedial action.	§102 adds new §121(g). Generic Remedies. The President may establish generic remedies where demonstrated to be effective in protecting human health and the environment from realistic and significant risk in a cost-effective and cost-reasonable manner. Generic remedies may not be established for mining and mineral processing facilities or related areas. Generic remedies may provide for consideration of site-specific factors. Where a generic remedy applies, the President need not perform a site specific risk assessment or evaluation of alternatives. Waiver. A party may seek a waiver from a generic remedy.	§502 adds §121(b)(5). Generic Remedies. To streamline the remedy selection process and facilitate rapid voluntary action, the President must establish (taking into account specified remedy selection factors specified) cost-effective generic remedies for categories of facilities and expedited procedures that include community involvement for selecting generic remedies. The remedy must be protective of human health and the environment at the facility and, where appropriate, may be selected without considering alternatives.

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Remedy Selection Procedures (Results-Oriented Cleanups)	§404 adds §129. Remedial Action Planning and Implementation. §129(a). Establishes procedures, in lieu of those under any other law, for conducting remedial investigations, feasibility studies, records of decisions, remedial designs, or remedial actions. Procedures provide for public participation. EPA is to conduct a facility evaluation to characterize the risk posed by a facility. Draft facility evaluations must be submitted to EPA for approval. EPA or a PRP must prepare and implement a remedial action plan which includes the results of a facility evaluation and a description of the facility-specific risk-based evaluation under §127 and discussion of the selected remedy. If a PRP prepares a proposed remedial action plan, the PRP must submit the plan to EPA for approval. A plan is considered approved if EPA does not disapprove the proposed plan within 90 days. §801. Amends §105(a) of CERCLA to require the President within 180 days of enactment to revise the National Hazardous Substance Response Plan to establish results-oriented procedures for remedial actions that minimize the time required and reduce potential for exposure to hazardous substances in a cost-effective manner.	§102 adds §121(h) Early Evaluation and Phased Remedial Action. §121(h)(1) directs the President to consider new results-oriented procedures for conducting remedial investigations and feasibility studies in an efficient, cost-effective and timely manner. The President is to emphasize performance-based standards, and where appropriate, provide means to update the most practicable methods under performance-based standards. The President shall, as part of the next proposed revision of the National Contingency Plan after enactment, propose, as appropriate, to incorporate the new procedures for conducting the remedial investigations and feasibility studies. §121(h)(2). To facilitate efficient site characterization that promotes early evaluation of remedial alternatives and to prevent ground water contamination problems from worsening, the President is to ensure that hydrogeologic and contaminant-related information is collected as part of site characterization activities prior to and during remedial investigation.	§103 amends §105(b) of CERCLA. Similar to H.R. 2500 §121(h)(1). §502 adds §121(b)(4)(B). Early Evaluation and Phased Remedial Action. The President is to employ a phased approach to site characterization and remediation; information gathered in each phase is to inform the next phase. To prevent ground water contamination from worsening, the President must ensure that hydrogeologic and contaminant-related information needed to select final ground water remedial actions (including findings of technical impracticability) is collected as part of site characterization activities prior to and during remedial investigation. Data taken from early response actions is to be included. To the extent technically practicable, the President is to implement phased remedial actions to minimize migration of contaminated ground water.

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
State Involvement in Remedy Selection	For a discussion of the State role generally, see p. 8-13.	§102 adds §121(n) and §121(o). §121(n) directs the President to promulgate regulations providing for meaningful State involvement in the initiation, development, and selection of remedial actions. §121(o) Department of Energy Facilities. For States adjoining (i.e., within 50 miles of) Department of Energy facilities, the President must extend the same opportunities for review and comment regarding response actions at those facilities that are provided to the States in which these facilities are located. Affected States may enter into a memorandum of understanding to address issues of mutual concern.	No comparable provision. §205(a). Similar provision. Applies to any Federal facility, not just those of DOE.
Emergency Removal Actions	§803. Increases the amount of time and money that may be spent on response actions to 2 years and $4 million (double the amounts in current law). Allows the President to exceed these limits when to do so would be "not inconsistent with any remedial action" selected or anticipated (as opposed to "consistent with the remedial action to be taken" in current law).	§112 amends §104(c)(1) to extend emergency removal authority to 2 years and $3 million from present 1 year and $2 million.	§505(a) amends §104(c)(1) to extend emergency removal authority to 2 years and $4 million from present 1 year and $2 million. §505(b) amends 120(e) to authorize removal actions that address nonemergency removal actions.

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Transition Rules	§406 adds new §131. Transition Rules for Facilities Involved in Remedy Selection on the Date of Enactment. (a) For a facility that is the subject of a remedial investigation and feasibility study (completed or not), PRPs or EPA may choose to follow the new remedial action plan process in §129. (b) Where a record of decision (ROD) has been signed but construction not begun, EPA or the State must, at the request of the implementer of the ROD, determine whether §127 would lead to the selection of a less costly remedy that achieves the goals of human health and environmental protection under this bill. (c) Where a ROD has been signed and construction has begun but not completed or long-term operation is expected, EPA or the State must, upon request, determine whether §127 would result in the selection of a remedy that saves at least 10% in cost and achieves health and environmental protection goals. For subsections (b) and (c), if EPA or the State does not respond within 90 days of a request, §127 will apply by default. (d) Disputes under this section will be referred to mediation.	§115. Effective Date and Transition Rules. (a) For facilities where no ROD has been published, these amendments become effective on the date of enactment. (b) Where a ROD has been signed but the remedial action has not been completed, any person with a substantial interest at a facility, or State, or Federal official overseeing a remediation at the site may petition the President, within 270 days of enactment, for a review of the action and request an alternative remedial action consistent with these amendments. The President must select the alternative if it would result in a total life-cycle cost savings of at least $1 million and protect human health and the environment from realistic and significant risks. Opportunity for public comment is provided. Judicial Review. Negative decisions on petitions are subject to judicial review.	§507. Transition. (a) This title becomes effective 180 days after enactment. After that date, remedies are to be selected in accordance with these amendments. (b) Until national goals and the national risk protocol are promulgated, the President may continue to use current regulations and guidance with regard to acceptable risk levels and risk assessments. (c) The President is not obligated to reopen a record of decision signed before the effective date of this title. If the President determines that a change to a ROD signed prior to the effective date of this title is necessary, the President may apply the rules in effect at the time the original ROD was signed.

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Judicial Review	§407 amends §113(h) to provide judicial review of actions under §129(c) (i.e., facility evaluations, proposed remedial action plans, and final remedial designs which are subject to EPA review). The court may stay the implementation of challenged actions. §404 adds §129(c) to provide that EPA's approval or disapproval of a remedial action plan with an implementation cost of more than $15 million is subject to judicial review.	§114 amends §113(h) by adding to the list of actions subject to judicial review by the appropriate Federal court: any action to review a final ROD regarding the selection of a remedy. (Also see Transition Rules, above.)	No comparable provision.
Hazardous Substance Easements on Property Use	No comparable provision.	§113 adds new §104(k) authorizing the President to acquire a hazardous substance easement restricting or controlling the use of land, water, or other natural resources. Provides for procedures and requirements for such easements. Easements remain enforceable for 20 years and may be renewed for additional 20-year periods. Whenever an easement is acquired, the President must record a notice of property use restriction in the local public land records. An easement remains in force until it expires by its terms or until the holder executes and records a termination and release in accordance with terms of the easement and approved by EPA.	§506. Similar amendment to H.R. 2500 except that easements remain enforceable in perpetuity, unless the holder of the easement executes and records a termination and release according to the terms of the easement and approved by EPA.

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Delisting Sites from the National Priorities List (NPL)	§405 adds new §130. Completion of Remedial Action and Delisting. Delineates procedures and timeframe for EPA to provide notice of completion of a remedial action and delisting of a facility, including a certification that the facility has met all remedial action requirements. Delisting does not affect liability allocations, cost-recovery provisions, or operation and maintenance obligations. §130(c) Release from Liability. A PRP is released from liability if the facility is available for unrestricted use and operation and maintenance is not needed. If the facility is not available for unrestricted use or operation and maintenance is required, EPA must review the status of the facility every 7 years and require additional remedial action, as needed. A facility or portion of a facility may be made available for restricted use. Revision of National Contingency Plan. §408 amends §105 to prevent EPA, when listing a site on the NPL, from including property at which no release has occurred, but to which a contaminant has migrated in ground water. This does not limit EPA's authority to obtain access such property and to undertake response actions.	No comparable provision.	No comparable provision.

SELECTION OF REMEDIAL ACTIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Additions to the National Priorities List	§802. Additions. Amends §105 of CERCLA to limit additions to the NPL during each of the three 12-month periods following enactment to 30 new vessels and facilities. Additions may be made only with the concurrence of the State in which the vessel or facility is located.	§502. Amends §105 of CERCLA to provide that, after the date of enactment, the President may add no more than 30 facilities to the NPL in 1996, 25 in 1997, 20 each in 1998 and 1999, and 10 each in 2000-2002. Additions may be made only with the concurrence of the State *and local* government. Relistings shall not count against the cap on additions to the NPL.	No comparable provisions.
	Sunset. Authority to add vessels or facilities to the NPL shall terminate 3 years after enactment. Upon completion of response actions for all vessels and facilities on the NPL, the Administrator's authority shall be limited to providing a national emergency response capability, conducting R&D, providing technical assistance, and conducting oversight of grants and loans to the States.	The President may not add any facility to the NPL after 12/31/02.	No comparable provisions.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Facilities Covered by Allocation	§501 adds new CERCLA §132. §132(a) defines, for purposes of §132, "allocation party"; "allocator"; and "mandatory allocation facility", which is a facility on the NPL that is non-federally owned, or if federally owned, has at least one non-Federal PRP. It has a record of decision (ROD) or remedial action plan approved by EPA after 6/15/95, or if approved prior to 6/15/95, construction or operation and maintenance continues after 6/15/95. §132(b) Differentiates Mandatory, Requested (by a PRP), and Permissive (if EPA considers it appropriate) Allocations. An allocation at a mandatory facility where a ROD has been signed prior to 6/15/95, and construction or operation and maintenance continues after that date, or at a non-mandatory allocation facility, will not require payment of an orphan share (subsec. l) or reimbursement (subsec. t).	§207 Adds new CERCLA §128. §128(a)(1). EPA shall initiate the allocation process: (1) if any PRP requests it for any response action costing more than $1 million if he has incurred response costs, resolved his liability to the U.S., or received a §106 administrative order; and (2) at any facility with two or more PRPs for which there is a Fund reimbursable share under §128(n). EPA may also initiate allocation at a facility involving two or more PRPs if one of them requests it, and EPA deems it appropriate.	§413 adds new CERCLA §130. §130(a). Allocations will be performed at non-federally owned NPL facilities (1) with two or more PRPs, for which a ROD is selected after 2/3/94, or (2) for which a ROD is selected before 2/3/94, if requested by a PRP which has resolved its liability with the U.S. or is performing a remedial action under a §106 order; or (3) at EPA's discretion, at any other facility with two or more PRPs.
	Excludes facilities where cost shares are already determined, and facilities where no PRP is liable for arranging for disposal, or for transporting hazardous substances.	Excludes facilities where cost shares are already determined.	Excludes facilities where cost shares are already determined, and facilities where all the PRPs are current or past owners or operators.
	§132(b). Generally, the costs covered by an allocation are those incurred at a mandatory allocation site after 6/15/95, and those incurred at requested and permissive allocation sites.	§128(a). An allocation applies to the costs of all response actions selected after the date of enactment.	§130(a). Allocations performed pursuant to (2) or (3) above shall not be construed to require payment of an orphan share, or the conferral of reimbursement rights.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Moratorium on Litigation and Enforcement	§132(c) sets a moratorium on litigation until 120 days after the allocator's report is issued, and a moratorium on §106 administrative orders of 180 days.	§128(b). The moratorium extends for 180 days after the allocator's report for new actions, and for 90 days for pending actions and §106 administrative orders.	§130(b). The moratorium extends for 90 days after the allocator's report for new and pending actions.
Allocation Process Begins; Search for PRPs	§132(d). Initiation of allocation process. EPA shall begin the search for PRPs as soon as practicable and will publish the list of PRPs no later than 120 days after beginning the search; any person may submit information concerning a PRP.	§128(c). The PRP search must be initiated within 60 days of the request for allocation; and the initial list of PRPs must be published within 120 days of beginning the search.	§130(c). The PRP search must begin within 60 days of the commencement of the remedial investigation (RI); any person may submit information concerning a PRP.
Selection of Allocator	§132(e). PRPs and a representative of the Fund elect the allocator. The bill identifies eligible allocators and unqualified allocators; EPA designates the allocator if PRPs do not within 60 days. §132(f). Within 30 days of selecting the allocator, EPA will provide him and the PRPs all required and potentially relevant information about the facility and the PRPs. §132(g). Any person may submit information about the facility and PRPs to the allocator for 60 days.	§128(d)-(f). Similar provisions. Also, if a PRP proposes a party for the allocation process who is found by the allocator not to be liable, the party's costs of participating in the allocation process, including attorney's fees, shall be borne by the PRP.	§130(e). Similar provisions, except EPA casts a vote for each identified but insolvent party. §130(c). A party assigned a zero share by the allocator will have his costs and attorney's fees paid by the PRP who named him.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Lists of Allocation Parties, and of *De Micromis* Parties	§132(g). The allocator issues the final list of allocation parties (PRPs), and a list of *de micromis* parties within 120 days of the publication of the initial list. The listed *de micromis* parties have no further liability, including liability for contribution.	§128(f). The final list of allocation parties is due within 180 days of the issuance of the initial list of PRPs. No mention of *de micromis* party list.	§130(c). EPA issues a preliminary list of allocation parties within 18 months of commencement of the RI, and a final list within 120 days after that.
Federal, State, and Local Agencies	§132(h). Any Federal, State, or local governmental agency named as a PRP is subject to, and entitled to the benefits of the allocation process as any other allocation party is. EPA or the Department of Justice (DOJ) represents the Fund in the allocation proceeding.	§128(g). Similar provisions. No comparable provision.	§130(t). Similar provisions regarding Federal agencies only, but no specific statement about representing the Fund. §403(c) amends CERCLA §201(a)(1), clarifying the equal application of the Act to the U.S. Government. Sovereign immunity is waived, and the payment of service charges for such things as processing permits is approved. EPA may issue §106 orders to other Federal agencies. States may impose penalties and fines on Federal agencies. Federal agencies have the right of contribution protection when they have resolved their liability.
Private Allocation	§132(i). Any group of PRPs may submit a binding settlement to the allocator for any response action within the scope of the proceeding if it covers 100% of the cost of the action, and does not allocate a share to a non-signatory of the settlement nor to a person in the orphan share (§132(l)). Signatories waive the right to seek recovery of costs.	§128(h). Similar provision, except the Fund representative may also participate as a signatory.	§130(g). Similar to H.R. 2500.
Allocator's Powers	§132(j). The allocator has information gathering and other powers.	§128(i) and (k)-(l). Similar provisions. PRPs have a duty to respond, and face civil and criminal penalties for failure to respond fully.	§130(i)-(j). Provisions are similar to H.R. 2500.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Allocator's Final Report	The allocator shall issue his report specifying PRP cost shares within 180 days after the issuance of the final list of allocation parties; EPA may grant an additional 90 days for good cause. The allocation share for each PRP shall separately state percentage shares for activity prior to and after 12/11/80.	§128(i). Similar provision, except that allocation shares are not broken down into pre- and post-12/11/80 shares.	§130(h). Similar provisions except allocation shares are not broken down into pre- and post-12/11/80 shares.
Retroactivity	§132(j). State and local agencies and other tax-exempt parties pay only 50% of their allocated shares for activity prior to 12/11/80; the other 50% is allocated to the orphan share.	§201 adds new CERCLA §112(g). PRPs may receive a reimbursement from the Fund for 50% of cleanup costs and natural resource damages referred to in §107(a), incurred after 10/18/95 for liability due to pre-1987 activity.	No comparable provision.
Allocation of Shares; and Retroactive, Strict, Joint and Several Liability	§132(k). The allocator prepares a non-binding allocation of shares based on specified equitable factors, and without regard to joint and several liability.	§128(j). Similar provision. The House bill has two additional equitable factors for owner/operators.	§130(h). Similar provisions to S.1285, except that §130(w) states that this section does not affect retroactive, strict, joint and several liability under this title.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Orphan Share	§132(l). The orphan share consists of: (A) the shares of insolvent or defunct parties; (B) the 50% shares of tax-exempt parties under §132(j); and (C) the remainder of any share not paid by a party where: (i) it was an expedited settlement with a person with limited ability to pay; (ii) it was a *de minimis* party; (iii) the party's share is limited or reduced by any provision of this Act; or (iv) the person settled with U.S. before allocation was completed. A share attributed to a hazardous substance that cannot be attributed to any party will be distributed [does not say if equally] among the allocation parties and the orphan share.	§128(n). The "fund reimbursable share" consists of the remainder of any share not paid by a party where: (i) the party had a *de minimis* exemption; (ii) the party was entitled to a reimbursement under §112(g); or (iii) the party was entitled to an exemption or limitation under new §107(n).	§130(h). The orphan share consists of (i) the shares of identified, but insolvent parties; (ii) the difference between the share attributable to parties who contributed MSW or sewage sludge, and the share actually assumed by them, which is limited to 10% of the response costs; (iii) the difference between the share attributable to parties with a limited ability to pay, and the share actually assumed by them; and (iv) shares attributable to small businesses that were eligible for an expedited settlement, but to whom EPA failed to make a timely settlement offer. A share attributed to a hazardous substance that cannot be attributed to any party will be distributed [does not say if equally] among the allocation parties and the orphan share.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Exemptions and Limitations of Liability	§305 adds CERCLA §107(p). Exempts the owner of property contiguous to contaminated property from liability. EPA may grant the owner an assurance of no enforcement, and protection against cost recovery.	§203(a) adds new CERCLA §107(n), creating exemptions and limitations of liability: **(1)** Pre-1987 *de minimis* contributors (defined as contributing less than 1%). **(2)** Municipal landfills, used oil recycling facilities, and battery recycling facilities listed on the NPL prior to 6-15-95, except for facilities owned or operated by the U.S., or required to have a RCRA hazardous waste permit. **(3)** municipal solid waste (MSW) and sewage sludge, if person is a homeowner or renter, small business, or small non-profit organization. **(4)** *De micromis* contributors (less than 55 gallons of liquid, or 100 pounds of solids). **(5)** Facilities acquired by inheritance. **(6)** Governmental entity that owned the road over which hazardous substances were transported, or that granted a license to conduct business. **(7)** Liability limit of 10% of total cleanup costs for MSW and sewage sludge. **(8)** Liability limit of fair market value or proceeds of sale for a charitable organization receiving the property after disposal took place. **(9)** Construction contractor acting on the owner's orders. **(10)** Property contiguous to an NPL site.	§403(a) and §404(e). Adds §107(n) creating exemptions from liability. Similar to the House bill for items (3)-(10), except that for item (9) the exemption applies only to small business construction contractors, as defined. Does not mention items (1) and (2). Also has a liability exemption for a bona fide prospective purchaser, and for the U.S. Government when responding to a natural disaster.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Activities Contrary to Law	No comparable provision.	§205 adds new §313. The exemptions and limits of liability of §107(n), and the reimbursement of §112(g) shall not apply to any person whose liability is based on an act that was illegal at the time, "illegal" meaning to have violated Federal or State law governing hazardous substances. For purposes of §107(n)(1) and §112(g), the applicable statute of limitations shall be deemed to have expired on 1/1/92.	No comparable provision.
De Minimis Parties	§132(m). The allocator shall issue a list of *de minimis* parties in his report (or earlier). Within 90 days EPA shall make a settlement offer to all *de minimis* parties, stated in dollars, based on an estimate of total cleanup costs. A *de minimis* party has 60 days to accept the offer; he would have no further liability under Federal or State law. The *de minimis* proceeds will be held by EPA for timely payment to the person performing the response action.	As noted above, *de minimis* parties are exempt from liability.	§130(c)-(d). EPA must make a written settlement offer to *de minimis* parties within 12 months and 60 days after the RI has begun. If a party does not reach agreement with EPA within 60 days thereafter, he is subject to the allocation. If a small business does not receive a settlement offer within 120 days after the required deadline, it has no further liability unless the President determines that there is just cause for the delay.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Expedited Settlements	No comparable provision.	§214(1)-(3) amends CERCLA §122(g). Expedited settlements are authorized for *de minimis* parties (contributed less than 1% by volume); arrangers for transport, and transporters of MSW and sewage sludge (liability limited to 10% of total costs); and a natural person, small business, or municipality with a limited ability to pay. §211(4) amends CERCLA §122(g). The eligibility requirements for a *de minimis* party to receive an expedited settlement may be waived.	§412 amends CERCLA §122(g). Similar provisions. §409(4). Similar provision.
Settlements Requiring Attorney General's Approval	No comparable provision.	§214(4) increases the minimum amount of a settlement embodied in an administrative order requiring the Attorney General's prior written approval from $500,000 to $2 million. Sec. 214(5) amends CERCLA sec. 122(h) authorizing agency and department heads to settle claims for response costs, fines, civil penalties, and punitive damages under $2 million without the Attorney General's prior written approval.	§412(4). Similar provision. §412(5) amends CERCLA §122(h) authorizing agency and department heads to settle claims for fines, civil penalties, and punitive damages under $300,000, and claims for total response costs under $2 million without the Attorney General's prior written approval.
Duty to Respond	§132(n)-(o). Parties have a duty to answer the allocator's requests for information. Not responding, and falsely responding carry civil and criminal penalties.	§128. Similar provisions.	§130(i)-(j). Similar provisions.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Documents	§132(p). The allocator shall maintain a document repository; confidentiality of documents, their discovery and admissibility, etc.	§128. Similar provisions.	§130(k). Similar provisions.
Rejection of Allocator's Report	§132(q)-(r). EPA and DOJ may jointly reject an allocation report within 180 days for irrationality, or bias, etc. A second rejected allocation report concerning the same response action may be judicially reviewed. Additional rules.	§128(o)-(p). Similar provisions, except EPA and DOJ have 120 days to reject the report.	§130(l)-(m). Similar to S. 1285, but if EPA and DOJ reject a second report, the President may commence an action under §107 (liability).
Settlement Provisions; Annual Report	§132(s). Provisions of settlements based on allocations, and limits to premiums for litigation risk faced by the U.S.; annual report to Congress on the allocation process.	§128(q). Similar provisions, except no report to Congress.	§130(o) and (v). Similar provisions.
Orphan Share Reimbursement	§132(t). EPA shall promptly reimburse the allocation parties for costs attributable to the orphan share.	No comparable provision.	§130(q)-(r). Similar provisions. Sets a limit on orphan shares paid from the Fund of $300 million per year.
Administrative Order Reimbursement	§132(u). An allocation party ordered to perform a response action is entitled to prompt reimbursement of costs in excess of his share.	§128(r). Similar provisions.	§130(o) and (q). Similar provisions.
Municipal Landfill Reimbursement	No comparable provision.	§202(a) adds new CERCLA §112(h). PRPs performing a response action at a municipal landfill after the date of the bill's introduction are eligible for reimbursement if they are covered by the (new) municipal landfill exemption (new §107(n)(2)). §202(b). Adds new §112(i). Rules for Reimbursement.	No comparable provision.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Post-Settlement Litigation	§132(v). Recovering costs by EPA from allocation parties; what costs are recoverable.	§128(s). Similar provisions.	§130(p). Similar provisions; also, the admissibility in court of the allocator's report.
New Information	§132(w). New information may lead to a new allocation if certain conditions are met.	§128(t). Similar provision.	§130(n). Similar provision.
Allocator's Discretion	§132(x). EPA shall not limit the allocator's discretion.	§128(u). Similar provision.	§130(s). Similar provision.
Representation of United States and a State	No comparable provision.	No comparable provision.	§130(u). EPA, DOJ, and a delegated State have a right to participate in the allocation process.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Response Action Contractors (RACs)	§502(a) amends CERCLA §101(20), definition of "owner or operator", to exclude response action contractors (RACs).	§210 amends CERCLA §119.	§130(x). A person who is potentially liable solely as a RAC with respect to a facility, shall not be named as an allocation party at that facility. §408 amends CERCLA §119.
		§210(d). The liability of RACs shall be determined in accordance with §119.	§408(a). The liability of RACs shall be determined in accordance with §119.
	§502(b)-(i) amends §119. §502(b). The existing exemption of RACs from liability under Federal law is extended to State law.	§210(a). Similar provision, and also extends exemption to local law. However, this section does not apply if a State adopts a law concerning RAC liability after enactment of this Act.	No comparable provision.
	Conduct of RACs will be evaluated based on standards and practices in effect at that time and place.	§210(a). Similar provision.	No comparable provision.
	An activity performed in accordance with an EPA-approved plan is not negligence.	No comparable provision.	§408(b). There is no liability for testing or implementing an alternative or innovative technology if its use is approved by EPA.
	§502(c). Indemnification authority may apply to claims under Federal or State law.	§210(b). Similar provision, and also applies to local law.	§408(c). Similar provision, and indemnification authority also covers common law.
	§502(d). The decision to indemnify will be based on availability of insurance.	No comparable provision.	§408(e). Similar provision; and EPA will also consider the adequacy of competition in response to solicitations.
(continued on next page)	§502(e). Threatened releases may be indemnified, as well as releases.	§210(c). Similar provision.	§408(d). Similar provision.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Response Action Contractors (RACs) (continued from previous page)	§502(f). Indemnification covers all response actions.	§210(g). Similar provision.	No comparable provision.
	§502(g). Subcontractors are also included.	No comparable provision.	§404(e) adds CERCLA §107(o). A small business construction contractor (as defined) shall not be liable if his activities were in accord with a contract with the owner or operator of the facility.
	§502(h). Surety bond provision is extended beyond 12/31/95.	§210(f). Similar provision.	§408(f). The surety bond provision is extended to 12/31/99.
	§502(i). Establishes a 7-year statute of repose.	§210(e). Sets a limit of 6 years after work is completed on actions against RACs.	No comparable provision.
EPA's Information Gathering and Access	§503(a). Amends §104(e) to make information available to the public 14 days after it is obtained.	§216. Similar, only makes information available to the public after 45 days.	No comparable provision.
		Also applies the confidentiality requirements to contractors, and amends the general confidentiality requirement regarding information obtained by EPA.	§401. Similar to H.R. 2500. Also authorizes EPA to demand additional information, and to require the informant to certify it; and authorizes administrative subpoenas.
No Withholding Information from Congress	No comparable provision.	§216(d) clarifies that CERCLA §104(e) does not authorize withholding information from Congress.	§401(f). Clarifies that §104(e) does not authorize withholding information from Congress.
Release of Evidence	§503(b). Amends §106(a) and §122(e)(1) to require that evidence of each element of liability is presented to PRPs.	§206(a) and §211(3). Similar provisions.	§402(b) and §409(3). Similar provisions.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Administrative Orders	No comparable provision.	§206(a). Amends §106(a). Administrative orders may not be amended by EPA unless there is a subsequent finding of imminent and substantial endangerment.	§402(a). CERCLA §106 administrative orders may be amended without a subsequent finding of imminent and substantial endangerment. §402(c) clarifies the meaning of "sufficient cause" regarding the failure to comply with a §106 administrative order.
Contribution Protection	§504(a) clarifies CERCLA §113(f)(2) that PRPs who have resolved their liability with the U.S. or a State are not liable for contribution claims or cost recovery (b) Writes new definitions in §101: "allocated share", "*de micromis* party", "*de minimis* party", and "orphan share".	No comparable provision.	No comparable provision.
Religious, Charitable, Scientific, and Educational Organizations	§505(a). Amends §101(20), definition of "owner or operator", to include religious, charitable, scientific, and educational organizations. (b) Limits the liability of these organizations for a facility received as a gift to its fair market value.	No comparable provision.	§403(a). Similar provisions.
Common Carriers	§506. Clarifies §107(b)(3) regarding liability of common carriers.	§204(b). Similar.	§404(d). Similar provision.
Railroads	§507. Adds §107(s) to limit the liability of a railroad owner or operator of a spur track.	No comparable provision.	No comparable provision.
Triple Damages	No comparable provision.	§204(a). Clarifies triple punitive damages provision of §107(c)(3).	§404(c). Similar provision.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Cost Recovery Actions	No comparable provision.	§208. Clarifies §113(g) concerning the period during which action may be brought for recovery of costs: generally, within 3 years of completion of a removal action, and within 6 years of completion of a remedial action.	§405. Similar provision.
Contribution Actions	No comparable provision.	§209. Clarifies §113(f) concerning contribution actions.	§406. Similar provision.
Recycling	No comparable provision.	§215 adds CERCLA §129 exempting recyclers from liability if they can make certain threshold demonstrations; it applies to scrap paper, plastic, glass, textiles, rubber (other than whole tires), metal, and batteries.	§414 adds CERCLA §129. Similar provisions.
Oversight Costs	No comparable provision.	No comparable provision.	§404(a) directs EPA to calculate its response action oversight costs on a national basis as a percentage of total response costs; the rate shall not exceed 10%. PRPs are liable for these costs.
Pollutant and Contaminant	No comparable provision.	No comparable provision.	§404(b). Liability for pollutants and contaminants is identical to that for hazardous substances only if they are a danger to health, and are not associated with the production or extraction of hydrocarbons, including gas, petroleum, etc.
EPA's Authority to Promulgate Regulations	No comparable provision.	No comparable provision.	§407 rewrites CERCLA §115 restating EPA's authority to promulgate regulations, and specifically affirms the validity of EPA's lender liability rule of 4/29/92.

LIABILITY ALLOCATIONS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Financial Instruments	No comparable provision.	§211 adds CERCLA §122(p) to authorize the use of annuity contracts and other financial instruments by PRPs to make payments for response costs over a period of time.	No comparable provision.
Cost Recovery Challenges	No comparable provision.	§211 adds CERCLA §122(q)-(r) permitting a PRP to challenge the cost recovery component of a settlement when a contribution action is barred, by suing EPA (or an authorized State). An unsuccessful challenger is liable for attorney's fees.	No comparable provision.
Authority to Hire	No comparable provision.	§212 adds CERCLA §122(s) authorizing EPA to hire neutral professionals to assist in §122 settlement negotiations.	§410. Similar to H.R. 2500.
Final Covenants Not to Sue	No comparable provision.	§213 amends CERCLA §122(f) requiring EPA to offer final covenants not to sue to settling parties who meet defined conditions and pay a premium; the premium may be waived or reduced for inability to pay. Discretionary covenants not to sue are also authorized, when in the public interest, in settlements that do not qualify for a final covenant.	§411. Similar to H.R. 2500.

FEDERAL FACILITIES			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Transfer of Authorities	§601 rewrites CERCLA §120(g). §120(g)(1). Defines for §120 "interagency agreement", "transfer agreement", and "transferee State".	§601 rewrites CERCLA §120(g).	No comparable provision.
State Application	§120(g)(2). A State may apply to EPA to exercise EPA's authorities at any facility owned or operated by the U.S. in the State.	H.R. 2500 does not distinguish between Federal and non-Federal facilities in establishing procedures or authority for delegation.	No comparable provision.
Transfer of Authorities	§120(g)(3). EPA shall agree to the transfer if: (1) the State has adequate legal authority, financial and personnel resources, organization, and expertise; (2) the State has demonstrated experience with similar authorities; (3) the State agrees to be bound by Federal requirements of §129 governing the design and implementation of the facility evaluation, remedial action plan, and remedial design; and (4) the State agrees to be bound by any interagency agreements (under §120) in effect at the time. If there is no interagency agreement, within 120 days the State shall agree with the agency that owns the facility on a process for resolution of any disputes regarding remedy selection. EPA shall not impose any other terms or conditions on the State.	§120(g)(1). Similar provision.	No comparable provision.

FEDERAL FACILITIES			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Effect of Transfer	§120(g)(4). The transfer gives the State exclusive authority to determine the manner in which those authorities are implemented. Existing interagency agreements are unchanged, except for the State replacing EPA.	§120(g)(3). Nothing shall affect the exercise by a State of any other authorities that may be applicable to Federal facilities in the State. §120(g)(2). Similar provision.	No comparable provision.
Selected Remedial Action	§120(g)(5). A remedial action selected by a transferee State is the only one required to be conducted, except for a RCRA corrective action initiated prior to enactment of this section.	No comparable provision.	No comparable provision.
EPA Approval of State Application	§120(g)(6)-(8). EPA must act on a State's application for transfer of authority within 120 days, or it is deemed to have been granted. If an application is disapproved a second time, it is subject to judicial review.	No comparable provision.	No comparable provision.
Withdrawal of Authorities	§120(g)(9). EPA may withdraw the transferred authorities for cause, as specified.	No comparable provision.	No comparable provision.
State Cost Responsibility	§120(g)(10). A State may require a remedial action exceeding Federal standards if the State pays the incremental costs.	No comparable provision.	No comparable provision.

FEDERAL FACILITIES			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Dispute Resolution and Enforcement	§120(g)(11). A dispute over a remedial action proposed by a Federal agency shall be resolved at the final level by the agency head and the State Governor. If no agreement is reached, the Governor shall make the final decision. An interagency agreement is enforceable in U.S. district court. The court may enforce compliance, impose civil penalties not to exceed $25,000 per day, and review a challenge by the Federal agency in accordance with §113(j).	§120(g)(1). Similar provisions.	No comparable provision.
Community Participation	§120(g)(12). If, prior to 6/15/95, a Federal agency had established a community-based advisory group for a facility, it may continue its activities, but would not be eligible for a technical assistance grant.	No comparable provision.	No comparable provision.

FEDERAL FACILITIES			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Department of Energy Environmental Cleanup Requirements	§602(a). Defines "civil or criminal sanction", and "Department of Energy environmental cleanup requirement" for use in this section. §602(b). Within 120 days of enactment, the Secretary of Energy, after notice and opportunity for comment by Federal, State, and local agencies, shall submit a list to Congress specifying the Dept. of Energy (DOE) environmental cleanup requirements that cannot be carried out with the funds appropriated specifically for that purpose. For FY 1997 and annually thereafter the Secretary shall provide the President information on DOE's budgetary needs, and a list of environmental cleanup requirements that cannot be met within DOE's budget request for that fiscal year, together with other information. The President shall submit that information to Congress with the annual budget request. After funds have been appropriated, DOE shall revise the list to reflect any differences between the budget request and funds appropriated.	No comparable provision.	No comparable provision.
DOE Civil or Criminal Sanctions and Judicial Review	§602(c). No civil or criminal action may be sought against the U.S., its employees, or contractors for a failure to comply with a DOE environmental cleanup requirement because of lack of funds. §602(d). A decision by the President or DOE in preparing a list shall not be subject to judicial review.	No comparable provision.	No comparable provision.

FEDERAL FACILITIES			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Innovative Technologies for Remedial Action at Federal Facilities.	§603(a) adds CERCLA §311(h). A Federal facility on the NPL may be designated by the President for research, development, and application of innovative technologies for remedial action at the facility. EPA will coordinate such activities. §603(b) amends §311(e). The annual report to Congress shall include information on the §311(h) research activities.	§602(a) adds CERCLA §311(h). Similar provision. §602(b) amends CERCLA §311(e). Similar provision.	No comparable provision.
Federal Facility Listing on the NPL	§604 amends CERCLA §120(d). The listing of Federal facilities on the NPL may provide notice that specified uncontaminated parcels are excluded.	§607. Similar provision.	No comparable provision.
Federal Facility Listing Deferral	§605 amends §120(d)(3). An appropriate factor to be taken into account in placing sites on the National Priorities List is the extent to which the Federal land-holding agency has arranged with EPA or a State to respond to the release under other legal authorities.	§606. Similar provision.	No comparable provision.
Transfers of Uncontaminated property	§606 amends §120(h)(4)(A). Federal property to be transferred that is identified as uncontaminated shall never have had hazardous substances or petroleum products stored upon it, instead of storage having been allowed upon it for up to a year, as present law allows.	§604. Similar provision.	§603. Similar provision.
Demonstration to Governor of Successful Remedy	No comparable provision.	§603 amends §120(h)(3). With regard to a Federal facility that is not on the NPL, it must be demonstrated to the State Governor, rather than the Administrator, that the remedy is operating successfully.	§602 amends §120(h)(3). Similar provision.

FEDERAL FACILITIES			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Agreements to Transfer by Deed	No comparable provision.	No comparable provision.	§604 adds §120(h)(5). A U.S. agency may agree to transfer real property or facilities by deed prior to the entering of such deed.
Applicability of CERCLA to Federal Entities and Facilities (continued on next page)	No comparable provision.	§605 rewrites CERCLA §120(a)(1) concerning the applicability of CERCLA to the U.S. government. (A)-(B). The U.S. is subject to all Federal, State, interstate, and local substantive and procedural requirements, including administrative orders, and penalties and fines. (C). The U.S. will pay reasonable service charges. (D). Neither the U.S. nor its employees is immune from any process or sanction of a State or Federal court. (E). No U.S. employee is personally liable for any civil penalty related to his official duties, but is subject to criminal sanctions. No U.S. agency is subject to criminal sanctions. (F). The waiver of sovereign immunity does not apply to a State law applied more stringently to the U.S. than to others. (G). This section applies only to the liability of the U.S. under §§106 and 107.	§615 similarly rewrites CERCLA §120(a)(1). §120(a)(1)(A)-(G) are similar.

FEDERAL FACILITIES			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Applicability of CERCLA to Federal Entities and Facilities (continue from previous page)	No comparable provision.	(H). EPA or a delegated State may issue a §106 administrative order to any agency of any branch of the U.S. government, but it is not final until the agency has had the opportunity to confer with the President or the delegated State.	(H). EPA may issue a §106 administrative order to any agency of any branch of the U.S. government, but it is not final until the agency head has had the opportunity to confer with the EPA Administrator. Unless a previously enacted State law or State constitution requires otherwise, penalties and fines collected from the U.S. shall be used only to improve or protect the environment or to defray the costs of environmental protection or enforcement.
		(I). U.S. agencies have the right to contribution protection.	(I). Similar provision.
		§605(3) deletes §120(a)(4), which gives States authority over Federal facilities not on the National Priorities List.	§615(3). Similar provision.

FEDERAL FACILITIES			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Interagency Agreements at Mixed Ownership Facilities	No comparable provision.	No comparable provision.	§601 amends §120(e). A Federal agency that owns or operates a facility at which it exercised no control over the activities that resulted in a release of hazardous substances is subject to the cleanup requirements of §120(e), unless it demonstrates that the agency was not the primary cause, the activities were pursuant to a statutory authority and occurred before 1976, and those responsible are financially viable and capable of performing or financing the response action. If the conditions are not met, the agency is subject to the cleanup requirements. If they are met, the agency may issue §106 orders; if the person seeks reimbursement, the agency (not the Fund) shall pay. If the agency fails to obtain performance within 12 months, the exception provided by this paragraph is void, and the agency shall commence a remedial investigation/feasibility study within 6 months.
Annual Studies of Environmental Priorities at Federal Facilities	No comparable provision.	§608. Each Federal agency shall conduct a study each year to determine environmental management priorities at its facilities on the NPL, and report to Congress within 90 days of the enactment of its annual appropriation. The study shall not impair the agency's obligations to comply with requirements agreed to under §120, unless the requirements have been addressed or waived, without objection from the State or Federal regulating agency.	No comparable provision.

FEDERAL FACILITIES			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Judicial Removals	No comparable provision.	§609. Any action initiated in any State or local court against the U.S. regarding hazardous substances may be removed by the U.S. to the appropriate U.S. district court.	No comparable provision.

NATURAL RESOURCES DAMAGE ASSESSMENT			
Provision	S. 1285	H.R.2500 (Subcommittee-Approved)	H.R. 228
Restoration of Natural Resource Damages: Definitions	§701 amends §101 of CERCLA by defining "natural resource", "commitment for use", "baseline", "compensatory restoration", "ecological service", "primary restoration", and "restoration".	§401 amends CERCLA §107 to define "restoration", "reasonable restoration measures", "cost-effective", "cost-reasonable", "timely", and "baseline condition". §804 amends §1006 of the Oil Pollution Act with new definitions for "cost-effective," cost-reasonable," and "timely."	No comparable provision.
Assessing/ Measuring Natural Resource Damages	§701 also amends CERCLA §107 provisions concerning the costs and damages for which a party would be liable, as well as limiting liability. §702 amends CERCLA section 107(f)(2), specifying conditions for natural resource damage assessments, conditions for judicial review and trustee decisions. It also amends CERCLA §301 to require that regulations be issued and specifies the contents of those regulations. §704 includes amendments relating to potential liability, statute of limitations, and the period for filing actions.	§401 amends CERCLA §107 to specify covered damages, limit liability, define terms and specify damage measurement conditions. §801 amends §1006 of the Oil Pollution Act of 1990 to ensure cost-effective restoration, rehabilitation, replacement, or acquisition of natural resources. The section would require that plans consider natural recovery as a means of natural resource restoration. §803 amends §1006(e) of the Oil Pollution Act to require the issuance of regulations by August 18, 1998, with requirements for damage assessments and the appointment of a lead trustee. §802 amends §1006(d) of the Oil Pollution Act of 1990 to change current language to include "reasonable and necessary " costs and other changes in measurement of damages.	No comparable provision.

NATURAL RESOURCES DAMAGE ASSESSMENT			
Provision	S. 1285	H.R.2500 (Subcommittee-Approved)	H.R. 228
Consistency Between Response and Restoration	§703 amends CERCLA §107(f) to require consistency in trustee-selected restoration standards; amends CERCLA §106(a) and §121(a) concerning limitations on response actions.	No comparable provision.	No comparable provision.

APPROPRIATIONS			
	S. 1285	H.R.2500 (Subcommittee-Approved)	H.R. 228
Authorizing Appropriations from the Fund	§901 amends CERCLA §111 to authorize appropriations from the Fund of $8.5 billion for a 5-year period, FYs 1996 to 2000.	No comparable provision.	§701 amends CERCLA section 111(a) to authorize $9.6 billion for a 6-year period, FY1995-2000.
Uses of the Fund, and Limitations	No comparable provision.	§1001 strikes out CERCLA §111(a)-(e), including authority to use the Fund for technical assistance grants, ATSDR activities, occupational safety and health, and worker training. It makes available, after 1/1/96, appropriated and other funds for response, removal, remediation, private response claims, acquisition, state/local costs, and contracts/cooperative agreements; and limits natural resource damage funds to $50 million per year for FY1996-1998 and $100 million annually thereafter. §1001 also limits funding for administration, oversight, support, studies, design, investigations, monitoring, assessment, evaluation, and enforcement to 25% of the total for FYs 1996-1998, and 20% for FY 1999 and thereafter. §103 authorizes $20 million per year for technical assistance grants.	§616 amends CERCLA §111(c)(12) increasing authorized funding for worker training and education grants to $30 million per year for FY1996-2000.
Uses - Orphan Share Funding	§902 amends CERCLA §111 to allow payment of orphan shares as a use of the Fund.	No comparable provision.	§702 amends CERCLA §111 to allow payment of orphan shares as a use of the Fund. §413 adds a new §130(r) which authorizes $300 million per year for payment of orphan shares.

APPROPRIATIONS			
	S. 1285	H.R.2500 (Subcommittee-Approved)	H.R. 228
Uses - ATSDR Funding	§903 amends CERCLA §111 to authorize the appropriation of funds for ATSDR activities to $50 million for FYs 1996-2000.	§1001 strikes out CERCLA §111(c)(4) authorizing use of the Fund for ATSDR activities.	§703 amends CERCLA §111 to authorize appropriations for ATSDR at $100 million annually for FYs 1996-2000; and $20 million for health services.
Research Funding	§904 sets limits for FY1996-2000 of $20 million per year for alternative or innovative technologies research, development, and demonstration programs, $20 million for hazardous substance research, demonstration and training, with no more than 10% for training; and $5 million for university research centers.	No comparable provision.	§704 sets research, development,and demonstration programs of $40 million for FY1996, $50 million for FY1997, $55 million for FY1998 and $55 million for FY-1999. Of these funds, not more than 10% may be used for training and not more than $5 million may be used for university research centers in any fiscal year.
Authorizing Appropriations from General Revenues	§905 authorizes appropriations from General Revenues of $250 million annually for FYs 1996-2000.	§1002 authorizes appropriations from General Revenues of $250 million per year for FYs 1996 to 2000.	§705 authorizes appropriations from General Revenues of $250 million per year for FYs 1996 to 2000.
Additional Limitations	§906 provides for additional funding limitations by limiting FY 1996-2000 funding for State voluntary response programs to $25 million per year, by limiting (Brownfield Cleanup) Citizen Information and Access Office funding to $15 million per year, and by limiting funding for Community Response Organizations to $15 million. This section specifies that collected recoveries will be credited as offsetting collections.	No comparable provision.	§706 amends CERCLA §111 and limits funding for FY1996-2000 for Citizen Information and Access offices to $50 million, and State voluntary cleanup to $20 million.

APPROPRIATIONS			
	S. 1285	H.R.2500 (Subcommittee-Approved)	H.R. 228
Reimbursing PRPs	§907 amends CERCLA §111(a) to allow the Fund to be used to reimburse PRPs if a PRP and EPA have entered into a settlement under which the Administrator is reimbursed for response costs, and the Administrator determines (through a Federal audit) that the costs are unallowable due to contractor fraud or Federal Acquisition Regulation, or should be adjusted due to audit procedures.	No comparable provision.	§707 amends §111 by setting forth conditions for reimbursing PRPs.
Extension of Taxes	No comparable provisions.	§1011, by amending the Internal Revenue Code, extends the collection of Superfund taxes through 2000. This section increases the aggregate from $11.9 billion to $22 billion until Dec. 31, 2000, extends the repayment deadline to Dec. 31, 2000, and provides additional sources of funds for Superfund.	No comparable provision.

MISCELLANEOUS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Definitions	Adds new remedy selection definitions to CERCLA §101: "actual or planned or reasonably anticipated future use of the land and water resources"; "significant ecosystem"; "valuable ecosystem"; "sustainable ecosystem"; "ecological resources"; and "significant risk to ecological resources that are necessary to the sustainability of a significant ecosystem or valuable ecosystem". Also see definitions under natural resources damage assessment.	§701(1)-(8) amends definitions in CERCLA §101: §(10) "federally permitted release"; §(11) "Fund" or "Trust Fund"; §(14) "hazardous substance"; §(20) "owner or operator"; §(23) "remove" or "removal"; §(25) "respond" or "response"; §(29) "disposal", "hazardous waste", and "treatment"; and §(33) "pollutant or contaminant". §701(9) adds new definitions in §101: "municipal solid waste"; "municipality"; "qualified household hazardous waste collection program"; "sewage sludge"; "small business"; "small nonprofit organization"; "construction contractor"; and "naturally occurring radioactive materials". Also see definitions under natural resources damages assessment.	§606(1)-(8) amends definitions in CERCLA §101: §(10) "federally permitted release"; §(14) "hazardous substance"; §(20) "owner or operator"; §(23) "remove" or "removal"; §(25) "respond" or "response"; §(29) "disposal", "hazardous waste", and "treatment"; §(33) "pollutant or contaminant"; and §(35) "contractual relationship." §606(9) adds new definitions in §101: "bona fide prospective purchaser"; "fiduciary"; "municipal solid waste"; "municipality"; "qualified household hazardous waste collection program"; "sewage sludge"; "site characterization"; "owner, operator, or lessee of residential property"; "small business"; "small nonprofit organization"; and "small business construction contractor".
Response Claims Procedures	No comparable provision.	§702 amends CERCLA §112(a) to clarify procedures for making claims against the Fund for response costs.	§607 makes technical amendments to §111 and §112 regarding response claims procedures.

MISCELLANEOUS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Superfund Assistance for Small Businesses in EPA's Ombudsman Office	No comparable provision.	§703 establishes a small business Superfund assistance section in EPA's Small Business Ombudsman Office to act as an information clearinghouse, particularly regarding the new liability allocation process, expedited settlements, *de minimis* and *de micromis* status, and ability-to-pay procedures. The section shall not give legal advice. It shall also make recommendations for EPA to ensure equitable, simplified, and expedited allocations and settlements for small businesses.	§608. Similar to H.R. 2500.
Consideration of Local Government Cleanup Priorities	No comparable provision.	§704 amends §104(c)(2). In setting work and resource priorities, EPA should give a higher priority to a facility at which a State or local government is a PRP and proposes to carry out the remedial action if (1) it will have a public benefit, and (2) it will result in that property or adjacent property being returned to productive use. A private PRP may request similar consideration, which is in the Administrator's discretion.	§609. Similar to H.R. 2500.
Atomic Energy Act Savings Clause	No comparable provision.	§705. This Act shall not affect the application of the Atomic Energy Act of 1954 to any facility licensed by the Nuclear Regulatory Commission.	§614. Similar provision.

MISCELLANEOUS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Annual Report to Congress	No comparable provision.	§706 amends §301(h)(1). EPA's annual report to Congress on the implementation of CERCLA shall be a report to the State Governors, as well. It shall include, additionally, a progress report of accomplishments and expenditures on a State-by-State basis. EPA shall respond in writing to any comments submitted to EPA by a State regarding reports developed under this subsection.	§617. Similar provision.
Disposal of Real Property	No comparable provision.	§707 clarifies §104(j) (which authorizes the acquisition of real property), authorizing the President to dispose of such property by sale, exchange, donation, or other means, in addition to the present authority to give it to a State.	No comparable provision.
Encouragement of New Technologies	No comparable provision.	No comparable provision.	§605 adds §111(a)(7), authorizing the payment of up to 50% of the cost of achieving the required level of response after using an alternative or innovative technology that fails to achieve the level of response required.
Consistent Application	No comparable provision.	No comparable provision.	§610 encourages EPA'S regional offices to apply CERCLA consistently.
Study of Participants ("Bad Apple" Provision)	No comparable provision.	No comparable provision.	§611 directs EPA to study its procedures for suspending and barring persons and businesses, particularly RACs, and to report to Congress with recommendations within 12 months.
Environmental Training and Certification Organizations	No comparable provision.	No comparable provision.	§613 directs EPA to publish guidelines leading to a State program for private organizations to train and certify individuals to perform Phase I Environmental Site Assessments.

MISCELLANEOUS			
Provision	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Remedial Technologies Demonstration Programs	No comparable provision.	No comparable provision.	§618 directs EPA to publish a report within 18 months that identifies existing remedial technology demonstration and development programs conducted by Federal and State governments, and prioritizes remedial technology needs at NPL sites.
Davis-Bacon Act	No comparable provision.	No comparable provision.	§621 applies the prevailing wage requirements of the Davis-Bacon Act to sites where any Fund money is used for clean-up. (At present Davis-Bacon applies to sites where only Fund money is used.)

AMENDMENTS TO THE SOLID WASTE DISPOSAL ACT			
	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Remediation Waste	§804(b). Amends §3001 of the Solid Waste Disposal Act (RCRA). Exemption from Hazardous Waste Regulation. Exempts remediation waste from the regulations that bar storage and land disposal of untreated hazardous waste, and from the regulations establishing minimum technological requirements for disposal facilities. Exempts remediation waste from all hazardous waste regulation unless the requirements are specified in a Federal or State order, consent agreement, State voluntary cleanup program, or other mechanism determined by the Administrator.	§901 adds Subtitle K (§12001-12024) to RCRA. §12003 provides a similar exemption of remediation waste from hazardous waste regulation, and also exempts it from §3020 of RCRA, which prohibits injection of untreated hazardous waste into underground sources of drinking water. Exemption applies to orders, permits, enforceable agreements, or other remedial action plans issued by EPA or a State.	No comparable provision.
	Permit Requirements. Exempts treatment, storage, and disposal of remediation waste from all Federal, State, and local permit requirements if it is conducted entirely at the facility at which the remediation takes place.	§12003(D). Similar provision, but the exemption only applies to permits under Subtitle C of RCRA.	No comparable provision.
	Definition. Defines remediation waste as a solid and hazardous waste generated by remediation, removal, containment, or stabilization activities. Includes ground water, surface water, soil, sediment, or debris that are contaminated as a result of a release, and contain a hazardous waste listed under RCRA or a waste with an identified hazardous waste characteristic.	§12002. Similar definition.	No comparable provision.

AMENDMENTS TO THE SOLID WASTE DISPOSAL ACT			
	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
Remedy Selection Under RCRA Corrective Action Program	No comparable provision.	§12004. Requires that remedies required under the RCRA corrective action program be "as necessary to protect human health and the environment from realistic and significant risks in a cost-effective and cost-reasonable manner." Lists 5 factors to be balanced in selecting remedies. Requires that the final remedy shall be based upon the current use of land, water, and other resources at the site, unless there is a substantial probability of different future uses.	No comparable provision.

AMENDMENTS TO THE SOLID WASTE DISPOSAL ACT			
	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
State Programs for Management of Remediation Waste: Interim and Final Certification	No comparable provisions.	Certification. §12011(a) and 12012(a). A State may submit to the Administrator a certification, supported by such documentation as the State considers appropriate, demonstrating that it has statutory and regulatory authority and resources in place to control the management of remedial action waste from generation to disposal. Interim Program. §12011(b) and 12012(b). If a State has a hazardous waste management program authorized under §3006(b) of RCRA, its remediation waste program shall be treated as a certified program beginning 60 days after the submission of certification. In other States, interim authorization begins 1 year after submission. Interim authorization shall continue until the Administrator issues a preliminary or final determination concerning a State's submission. Determination. Not later than 18 months after enactment (2 years in States not authorized under §3006), the Administrator shall issue or deny final authorization to carry out a remedial waste management program. If the Administrator fails to act within the 18 month or 2 year deadline, the program will be considered certified.	No comparable provisions.

AMENDMENTS TO THE SOLID WASTE DISPOSAL ACT			
	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
State Programs for Management of Remediation Waste: Effect of Certification, Withdrawal or Denial, and EPA's Regulations and Implementation	No comparable provisions.	Preliminary Determination. §12011(c)(2). In States with authorized hazardous waste programs, if the Administrator determines on preliminary review that a State will likely fail to meet one or more of the necessary criteria, the State shall not have interim authorization. Effect of Certification. §12013(a). Upon certification of a State program, remediation waste shall no longer be considered hazardous under Subtitle C of RCRA or toxic under §6(e) of TSCA. Withdrawal or Denial. §12014. The Administrator may withdraw or deny final authorization. In such cases, the Administrator shall ensure completion of any ongoing remedial action plan and establish a Federal remedial waste action program. EPA Remediation Waste Program. §12021. Not later than 24 months after enactment, the Administrator shall promulgate regulations for management of remediation waste and shall implement a program in any State that does not have a certified program. Upon the implementation of such program, remediation waste shall no longer be considered hazardous under Subtitle C of RCRA.	No comparable provisions.

AMENDMENTS TO THE SOLID WASTE DISPOSAL ACT			
	S. 1285	H.R. 2500 (Subcommittee-Approved)	H.R. 228
State Programs for Management of Remediation Waste: Additional Authorities	No comparable provisions.	§12022-12024 provide authority for inspections, enforcement, penalties, and retention of State authority under the EPA program.	No comparable provisions.
Underground Storage Tanks	No comparable provision.	§902 amends §9003 of RCRA to provide that petroleum-contaminated media and debris from cleanup of leaking underground storage tanks that is hazardous due to organic constituents shall not be considered hazardous waste.	No comparable provision.

H.R. 228: TITLE VIII - ENVIRONMENTAL INSURANCE RESOLUTION FUND

(No comparable provisions in S. 1285 and H.R. 2500)

Title VIII of H.R. 228 creates the Environmental Insurance Resolution Fund. It has no counterpart in either H.R. 2500 or S. 1285. The purpose of the fund is to settle insurance claims related to the cleanup of wastes disposed before 1986, and to end litigation between insurance companies and the insured firms.

Section 801 provides the short title of Title VIII, the "Environmental Insurance Resolution and Equity Act of 1994."

Section 802 provides definitions of 18 terms for purposes of title VIII.

Section 803 establishes the Fund, providing for its membership, powers, and other organizational elements.

Section 804 states that the Fund will offer one comprehensive resolution to each eligible person. The offer will be for a percentage of all eligible costs the person incurred in connection with facilities on the National Priorities List (NPL) or CERCLA removal actions related to sites which received hazardous substances before December 31, 1985. An eligible person is one who has received a notice that he may be a potentially responsible party (PRP), or who was liable for a removal, and had entered into a valid insurance contract for qualified insurance. If the Fund determines that the person is eligible it must make a resolution offer to the person within 180 days.

Section 805 provides for the filing and active pursuit of claims; documentary evidence must be submitted. A person may be denied a resolution offer if he was convicted of a felony which has a material effect on the response costs or natural resource damage incurred.

Section 806 requires the Fund to make resolution offers equal to a percentage of the lesser of the eligible costs actually incurred, or the available insurance coverage. The percentage will be based on the litigation venue(s) established by the PRP when a complaint was filed, or the facility location. Three settlement-offer categories are established, each with a different settlement-offer percentage: 20, 40, or 60 percent. The categories depend on the favorableness of the State's insurance law for PRPs.

- The State percentage is 20 percent for Florida, Maine, Maryland, Massachusetts, Michigan, New York, North Carolina, and Ohio.

- The State percentage is 60 percent for California, Colorado, Georgia, Illinois, New Jersey, Washington, West Virginia, and Wisconsin.

- For all other States, the percentage is 40 percent.

The Fund calculates a weighted average where multiple venues have been established; large sites receive extra weighting. If an eligible person seeks payment of costs for a site he owned or leased, only 70 percent of the eligible costs will be taken into account in making payments.

Section 807 states that a person may make an irrevocable election to accept any resolution offer of the Fund at the time the person submits a request for a resolution. A person who does not make such an election has 60 days after receipt of an offer from the Fund to accept or reject it. A person who accepts a resolution offer shall agree in writing to waive any existing or future claims against any insurer for eligible costs.

Section 808 requires the Fund to make equal annual payments to the eligible person over 10 years, although they may be made over a shorter period if the costs do not exceed $50,000. There are adjustments for deductibles and self-insurance, and adjustments for certain duty-to-defend costs.

Section 809 provides that if an eligible person rejects a resolution offer, litigates a claim, and obtains a judgment against or a settlement with an insurer, the Fund (1) will reimburse the insurer the lesser of the amount of the resolution offer, or the final judgment or settlement; and (2) may, if the resolution offer exceeded the final judgment or settlement, reimburse the insurer for reasonable costs and legal fees.

Section 810 requires an annual audit of the Fund's financial statements, and authorizes EPA's Inspector General to conduct audits and investigations as he sees fit.

Section 811 states that enactment of this title will operate as a stay of the commencement or continuation of any legal action regarding claims for indemnity. The stay will terminate upon the earlier of:

- the rejection of a resolution offer by the eligible person;
- a determination by the Fund that an offer will not be made to a person, or that the person is not eligible;
- the minimum participation level under section 816 has not been achieved; or,
- a failure by the Fund to make timely payments to the eligible person.

Section 812 calls for the prompt publication of regulations concerning procedures for submitting and documenting requests for resolution offers. There will be no judicial review of regulations, except for inconsistency with the law.

Section 813 is concerned with court jurisdiction and penalties.

Section 814 contains miscellaneous provisions.

Section 815 calls for several reports. By the end of the fifth year after enactment the President shall report to Congress, assessing the potential liability of the Fund over the next 5 years, and recommending amendments to address any shortfall between the projected potential liability of the Fund and the amounts authorized to be raised. The President also shall conduct a study of the number of non-NPL facilities and their average cleanup cost, and report within 3 years after enactment. (CERCLA removal actions at sites that did not later get placed on the NPL are also eligible for claims.)

The Fund will report by January 15 of each year on its activities for the prior fiscal year. The report will include a financial statement, and a determination of whether the fees and assessments will be sufficient to meet the anticipated obligations of the Fund. At any time the Fund determines that its fees and assessments will be insufficient to meet its obligations, it shall promptly report to the President and the Congress.

Section 816 sets the effective date of title VIII as the date of enactment.

The section also establishes the minimum participation level of eligible persons. Each insurance company providing coverage to eligible persons will submit to the Fund, within 30 days of enactment, a list of all eligible persons which filed suit against it for eligible costs prior to enactment of this Act, and shall notify each eligible person on the list. Each such person will file a request for its applicable percentage with the Fund within 60 days, and the Fund will notify the person of the percentage within 90 days of enactment. The person will decide whether or not to accept the percentage within 135 days of enactment; failure to reject the determination will be deemed acceptance.

Within 150 days of enactment the Fund will determine the number of eligible persons, and the weighted average of such persons who have accepted or rejected the determination. If more than 15 percent of the eligible persons or more than a weighted average of 15 percent have rejected the determinations, the provisions of this title and the insurance fee provisions of title IX shall cease to have force and effect. The weighted average is determined by multiplying the acceptances or rejections by eligible persons who filed suit times the number of each such person's eligible facilities.

Section 817 ends the Fund's authority to accept requests for resolution 10 years after enactment, and ends its authority to offer resolutions 10 years and 180 days after enactment. Until terminated, the Fund will continue to make payments pursuant to resolution offers, and to reimburse insurers with respect to litigation where the resolution offer was rejected.

Section 818 terminates the Fund if, during any 2-year calendar period commencing after the 10-year mark, no eligible

person makes a claim to the Fund for eligible costs; all amounts remaining in the Fund will be deposited in the General Fund of the Treasury.

TITLE IX - TAXES

Title IX is divided into three subtitles. One provides the taxes for the new Environmental Insurance Resolution Fund (EIRF) created by title VIII, the second extends existing taxes for the Superfund, and the third requires an annual report from EPA. The proposal will generate $8.1 billion for the EIRF at a rate of $810 million per year for 10 years.

Subtitle A - Environmental Insurance Resolution Taxes and Trust Fund

Section 901 amends chapter 38 of the Internal Revenue Code of 1986 by adding a new "Subchapter E - Environmental Insurance Resolution Taxes" (Sections 4691-4698). Two new excise taxes, a retrospective tax and a prospective tax, and two special assessments are levied on direct insurers and reinsurers. They generally are effective on January 1, 1995, and expire after December 31, 2004.

Years 1-4. For the first 4 years, 70 percent of the Fund will be financed by a retrospective tax on net premiums written by domestic and foreign insurers and reinsurers on certain U.S. commercial liability insurance during the period 1968-1985. The insurance policies subject to the retrospective tax are those providing commercial comprehensive general liability coverage, or environmental liability coverage. Insurers would pay about 45 percent, and reinsurers about 25 percent. The other 30 percent would be financed by a prospective tax on premiums from commercial insurance currently written by domestic and foreign insurers. The commercial lines of business subject to the prospective tax are fire, commercial multiple peril, other liability, products liability, allied lines, inland marine, commercial auto no-fault, other commercial auto liability, commercial auto physical damage, farm owners multiple peril, ocean marine, financial guaranty, aircraft, fidelity, surety, glass, burglary and theft, and boiler and machinery. The Treasury Department may designate additional lines of business.

In calculating the retrospective tax, the premiums the insurer received are indexed for inflation and restated in 1985 dollars. An exemption amount (generally $50 million) is subtracted from that total, and the tax is assessed on the balance. For the first 4 years (1995-1998), the annual tax rate on direct insurance is 0.22 percent, and on reinsurance, it is 0.83 percent. After 1998, the tax on direct insurance expires, and the tax rate on reinsurance is 0.14 percent. The retrospective tax is imposed on a calendar year basis and is payable in equal monthly installments. There are special rules that apply for acquisitions of businesses in years past, for groups of related insurers, and for foreign insurers.

Years 5-10. For the next 6 years, there would be no retrospective tax on direct insurance, but the retrospective tax on reinsurers would continue to generate 25 percent of the Fund's revenues. A prospective tax on direct insurance will provide 65 percent of revenues, and the last 10 percent would be contributed by a special assessment on insurers that wrote insurance coverage giving rise to Superfund claims and for which the Fund makes resolutions. (A portion of the retrospective tax on reinsurers is raised by a similar special assessment, which allows them to account for the tax over a number of years rather than in a single year.)

Section 902 establishes the Environmental Insurance Resolution Trust Fund.

Section 903 exempts the Resolution Fund from income taxation.

Section 904 provides that the effective date is January 1, 1995.