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THE WHITE HOUSE

WASHINGTON

November 30, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Proposed Executive Order Entitled
"Amending Executive Order No. 11157
as it Relates to Pay for Hazardous Duty"

Richard Darman has asked for comments by close of business December 4 on the above-referenced proposed executive order. The order, proposed by the Department of Defense, has been approved by OMB and, as to form and legality, by the Justice Department Office of Legal Counsel. Pursuant to 37 U.S.C. § 301(a) the President may issue regulations specifying when incentive pay may be awarded for hazardous military duty. Those regulations are embodied in Executive Order 11157. That order provides that incentive pay may be awarded for demolition of "underwater objects, obstacles or explosives." Established practice had been to award incentive pay for any demolition work, whether underwater or not. A recent audit, however, suggested that only underwater demolition work qualified under Executive Order 11157. The proposed order would simply delete the word "underwater," to codify the existing practice. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

November 30, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Executive Order Entitled
"Amending Executive Order No. 11157
as it Relates to Pay for Hazardous Duty"

Counsel's Office has reviewed the above-referenced proposed executive order, and finds no objection to it from a legal perspective.

FFF:JGR:aea 11/30/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

November 30, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Executive Order Entitled
"Amending Executive Order No. 11157
as it Relates to Pay for Hazardous Duty"

Counsel's Office has reviewed the above-referenced proposed executive order, and finds no objection to it from a legal perspective.

FFF:JGR:aea 11/30/84
cc: FFFielding/JGRoberts/Subj/Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) _____

Name of Correspondent: _____

Richard Darman

☐ MI Mail Report

User Codes: (A) _____

(B) _____

(C) _____

Subject: _____

Proposed Executive Order Entitled
"Amending Executive order No. 11157
as it relates to pay for Hazardous
Duty".

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUHOU	ORIGINATOR	8411129			1 1
	Referral Note:				
CUAT 18	D	8411129			58412104 COB
	Referral Note:				
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	Referral Note:				
		1 1			1 1
	Referral Note:				

ACTION CODES:

A - Appropriate Action
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I - Info Copy Only/No Action Necessary
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FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
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Comments: _____

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WHITE HOUSE STAFFING MEMORANDUM

DATE: 11/29/84 ACTION/CONCURRENCE/COMMENT DUE BY: 12/4/84

SUBJECT: PROPOSED EXECUTIVE ORDER ENTITLED "AMENDING EXECUTIVE ORDER NO. 11157 AS IT RELATES TO PAY FOR HAZARDOUS DUTY"

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	☐	☐	MURPHY	☐	☒
MEESE	☐	☒	OGLESBY	☐	☒
BAKER	☐	☒	ROGERS	☐	☐
DEAVER	☐	☒	SPEAKES	☐	☐
STOCKMAN	☐	☐	SVAHN	☒	☐
DARMAN	☐	☒	VERSTANDIG	☐	☐
FIELDING	☒	☐	WHITTLESEY	☐	☐
FULLER	☒	☐	CLERKS OFFICE	☐	☒
HERRINGTON	☐	☐	_____	☐	☐
HICKEY	☐	☐	_____	☐	☐
McFARLANE	☒	☐	_____	☐	☐
McMANUS	☐	☐	_____	☐	☐

REMARKS:

May we have your comments on the attached Executive Order by close of business Tuesday, December 4. Thank you.

RESPONSE:

1984 NOV 29 PM 5:43

Richard G. Darman
Assistant to the President
Ext. 2702



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

1984 NOV 20 11 0 11
November 21, 1984

MEMORANDUM FOR: THE PRESIDENT

FROM: DAVID A. STOCKMAN *DAS*

SUBJECT: PROPOSED EXECUTIVE ORDER ENTITLED "AMENDING
EXECUTIVE ORDER NO. 11157 AS IT RELATES TO PAY
FOR HAZARDOUS DUTY"

SUMMARY. This memorandum forwards for your consideration a proposed Executive order which would amend Executive Order No. 11157 as it relates to pay for hazardous duty.

BACKGROUND. The Department of Defense has paid hazardous duty pay to personnel performing demolition duty, on land as well as underwater, for 20 years. However, during recent Air Force audits, the opinion was advanced that under Section 109 of Executive Order 11157, as amended (which defines demolition duty as to "demolish by use of explosives underwater objects, obstacles or explosives...") only underwater demolition work was covered.

The proposed Executive order would remove the word "underwater" from this definition and restore demolition duty pay entitlements for personnel performing otherwise covered non-underwater demolition work.

All affected agencies concur in the proposed Executive order.

RECOMMENDATION. I recommend that you sign the proposed Executive order.

Attachment



U.S. Department of Justice

Office of Legal Counsel 604 NOV 29 11 0 1964

Office of the
Assistant Attorney General

Washington, D.C. 20530

NOV 29 64

The President,

The White House.

My dear Mr. President:

I am herewith transmitting a proposed Executive order entitled "Amending Executive Order No. 11157 as It Relates to Pay for Hazardous Duty."

This proposed order was submitted by the Department of Defense. It has been forwarded for the consideration of this Department as to form and legality by the Office of Management and Budget with the approval of the Director.

The proposed Executive order is approved as to form and legality.

Respectfully,

Ralph W. Tarr

Ralph W. Tarr
Acting Assistant Attorney General
Office of Legal Counsel



U.S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

NOV 29 1981

MEMORANDUM

Re: Proposed Executive order entitled
"Amending Executive Order No. 11157 as
It Relates to Pay for Hazardous Duty"

The attached proposed Executive order was submitted by the Department of Defense. It has been forwarded for the consideration of this Department as to form and legality by the Office of Management and Budget with the approval of the Director.

The proposed order would, by amending Executive Order No. 11157, clarify that military personnel may receive hazardous duty pay when, as their primary duty assignment, they use explosives to demolish objects, obstacles, or explosives. Under 37 U.S.C. § 301(a), the President is authorized to set forth by regulation the circumstances in which military personnel may receive hazardous duty pay. Due to an ambiguity in Executive Order No. 11157, Department of Defense auditors have suggested that such duty is restricted in certain circumstances to demolition work performed underwater. The proposed order would clarify that there is no requirement that hazardous duty pay for military personnel be limited under this provision for work performed underwater.

The proposed Executive order is acceptable as to form and legality.

Ralph W. Tarr
Acting Assistant Attorney General
Office of Legal Counsel

EXECUTIVE ORDER

- - - - -

AMENDING EXECUTIVE ORDER NO. 11157 AS IT RELATES TO PAY FOR HAZARDOUS DUTY

By the authority vested in me as President of the United States of America by Section 301 (a) of Title 37 of the United States Code, and in order to define the scope of one category of hazardous duty, it is hereby ordered as follows:

Section 1. Executive Order No. 11157 of June 22, 1964, as amended, is further amended by striking out subsection (b) of Section 109 of Part I and inserting in lieu thereof the following:

"(b) The term 'duty involving the demolition of explosives' shall be construed to mean duty performed by members who, pursuant to competent orders and as a primary duty assignment (1) demolish by the use of explosives objects, obstacles, or explosives, or recover and render harmless, by disarming or demolition, explosives which have failed to function as intended or which have become a potential hazard; (2) participate as students or instructors in instructional training, including that in the field or fleet, for the duties described in clause (1) hereof, provided that live explosives are used in such training; (3) participate in proficiency training, including that in the field or fleet, for the maintenance of skill in the duties described in clause (1) hereof, provided that live explosives are used in such training; or (4) experiment with or develop tools, equipment, or procedures for the demolition and rendering harmless of explosives, provided that live explosives are used."

Sec. 2. This Order shall be effective immediately.

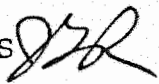
THE WHITE HOUSE

WASHINGTON

September 25, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Proposed Executive Order Entitled
"Amending Executive Order No. 11157
as it Relates to Incentive Pay for
Hazardous Duty"

Richard Darman has asked for comments as soon as possible on the above-referenced proposed executive order. The order, proposed by the Department of Defense, has been approved by OMB and, as to form and legality, by the Justice Department Office of Legal Counsel. The bases for the award of incentive pay for hazardous military duty are outlined in 37 U.S.C. § 301(a). A 1981 amendment to 37 U.S.C. § 301(a) added those who service aircraft or missile systems with highly toxic fuels to the list of those eligible for hazardous duty pay. Public Law 98-94, enacted September 24, 1983, further amended 37 U.S.C. § 301(a) to include those who test as well as service such systems. This latest statutory amendment necessitates an amendment to Executive Order 11157, the executive order that implements the statutory grant of hazardous duty pay. The instant proposed executive order accomplishes the necessary amendment.

I have reviewed the proposed executive order and have no objections, beyond the technical one noted in the attached draft memorandum for Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

September 25, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Executive Order Entitled
"Amending Executive Order No. 11157
as it Relates to Incentive Pay for
Hazardous Duty"

Counsel's Office has reviewed the above-referenced proposed executive order, and finds no objection to it from a legal perspective. In the twenty-sixth line of the draft order, however, "(b)" should be "(B)."

FFF:JGR:aea 9/25/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE
WASHINGTON

September 25, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Executive Order Entitled
"Amending Executive Order No. 11157
as it Relates to Incentive Pay for
Hazardous Duty"

Counsel's Office has reviewed the above-referenced proposed executive order, and finds no objection to it from a legal perspective. In the twenty-sixth line of the draft order, however, "(b)" should be "(B)."

FFF:JGR:aea 9/25/84
cc: FFFielding/JGRoberts/Subj/Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1/1Name of Correspondent: Richard Darman☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Proposed Executive Order Entitled
"Amending Executive Order No. 11157 as
it Relates to Incentive Pay for Hazardous
Duty"

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CUHOU</u>	ORIGINATOR	<u>84 09 19</u>			<u>1 1</u>
<u>CUAT 18</u>	D	<u>84 09 19</u>			<u>SPY 09 24</u>
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		<u>1 1</u>			<u>1 1</u>

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WHITE HOUSE STAFFING MEMORANDUM

DATE: 9/19/84 ACTION/CONCURRENCE/COMMENT DUE BY: 9/24/84 c.o.b.

SUBJECT: PROPOSED EXECUTIVE ORDER ENTITLED "AMENDING EXECUTIVE ORDER NO. 11157 AS IT RELATES TO INCENTIVE PAY FOR HAZARDOUS DUTY"

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	MURPHY	☐	☒
MEESE	☐	☒	OGLESBY	☒	☐
BAKER	☐	☒	ROGERS	☐	☐
DEAVER	☐	☒	SPEAKES	☐	☒
STOCKMAN	☐	☐	SVAHN	☒	☐
DARMAN	☐	☒	VERSTANDIG	☒	☐
FIELDING	☒	☐	WHITTLESEY	☒	☐
FULLER	☒	☐		☐	☐
HERRINGTON	☐	☐		☐	☐
HICKEY	☐	☐		☐	☐
McFARLANE	☒	☐		☐	☐
McMANUS	☐	☒		☐	☐

REMARKS:

May we have your comments by close of business September 24. Thank you.

RESPONSE:

1984 SEP 19 PM 4:48

Richard G. Darman
Assistant to the President
Ext. 2702



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

September 11, 1984

MEMORANDUM FOR: THE PRESIDENT

FROM: DAVID A. STOCKMAN *AS*

SUBJECT: PROPOSED EXECUTIVE ORDER ENTITLED "AMENDING
EXECUTIVE ORDER NO. 11157 AS IT RELATES TO
INCENTIVE PAY FOR HAZARDOUS DUTY"

SUMMARY. This memorandum forwards for your consideration an Executive Order proposed by the Department of Defense which would amend Executive Order No. 11157 as it relates to incentive pay for hazardous duty.

BACKGROUND. The Department of Defense Authorization Act of 1984, enacted on September 24, 1983 (Public Law 98-94), contains a technical amendment to Public Law 97-60, expanding the definition of the hazardous duty pay skill in Public Law 97-60 to include those individuals who test, as well as service, aircraft or missile systems while highly toxic fuels or propellants are used.

By the proposed Executive order, the President discharges his duty to specify which duties in a research and development environment are included within the law's broader language.

By law, the persons performing these duties are entitled to hazardous duty pay retroactive to October 1983.

None of the affected agencies has objected to the proposed Executive order.

RECOMMENDATION. I recommend that you sign the proposed Executive order.

Enclosure



U.S. Department of Justice

Office of Legal Counsel

342

Office of the
Assistant Attorney General

Washington, D.C. 20530

SEP 19 1987

The President,

The White House.

My dear Mr. President:

I am herewith transmitting a proposed Executive order entitled "Amending Executive Order No. 11157 As It Relates to Incentive Pay for Hazardous Duty."

This proposed order was submitted by the Department of Defense and has been forwarded for the consideration of this Department as to form and legality by the Office of Management and Budget with the approval of the Director.

The proposed Executive order is approved as to form and legality.

Respectfully,

Theodore B. Olson
Assistant Attorney General
Office of Legal Counsel



U.S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

SEP 19 1983

MEMORANDUM

Re: Proposed Executive order entitled "Amending
Executive Order No. 11157 As It Relates To
Incentive Pay for Hazardous Duty"

The attached proposed Executive order was submitted by the Department of Defense and has been forwarded for the consideration of this Department as to form and legality by the Office of Management and Budget with the approval of the Director.

The proposed order is authorized by Pub. L. No. 98-94, § 903, 97 Stat. 614, 635 (1983), which amended 37 U.S.C. § 301 (a)(12) to add certain handlers of toxic fuel to the list of those eligible for hazardous duty pay. The order will amend Exec. Order No. 11157, 3 C.F.R. 200 (1964-65 Comp.), as amended, by revising § 109(g) to reflect this addition. This change will, as authorized by the statute, be retroactive to October 1, 1983.

The proposed Executive order is acceptable as to form and legality.

Theodore B. Olson
Assistant Attorney General
Office of Legal Counsel

EXECUTIVE ORDER

- - - - -

AMENDING EXECUTIVE ORDER NO. 11157 AS IT RELATES TO INCENTIVE PAY FOR HAZARDOUS DUTY

By the authority vested in me as President of the United States of America by Public Law 98-94 and Section 301(a) of Title 37 of the United States Code, and in order to define the scope of one category of hazardous duty, it is hereby ordered as follows:

Section 1. Executive Order No. 11157 of June 22, 1964, as amended, is further amended by striking out subsection (g) of Section 109 of Part I and inserting in lieu thereof the following:

"(g) The term 'duty involving the servicing of aircraft or missiles with highly toxic fuels or propellants or the testing of aircraft or missile systems (or components of such systems) during which highly toxic fuels or propellants are used' shall be construed to mean duty performed by members as a primary duty that requires (1) removal, replacement, and servicing of the emergency power unit of an aircraft with H-70 propellant (30 percent water, 70 percent hydrazine); (2) participation by those personnel performing duties described in (g) (1) who must also participate in an emergency response force, spill containment, or spill cleanup involving H-70 propellant (30 percent water, 70 percent hydrazine); (3) handling and maintaining the liquid propellants (liquid oxidizer-nitrogen tetroxide; unsymmetrical dimethyl hydrazine) used in the Titan weapon system, if such duty requires qualification in the use of the Rocket Fuel Handler's Clothing Outfit and involves (A) launch duct operations, including flow, pressurization, on-load, set-up or tear down involving propellant transfer operations; (b) set-up, installation or tear down for fuel/oxidizer flow; (C) decontamination of equipment, including, but not limited to the Rocket Fuel Handler's Clothing Outfit; (D) venting or

✓

pressurizing missile fuel or oxidizer tanks; (E) removing or replacing missile components while missile fuel and oxidizer tanks are loaded with such propellants; (F) transferring propellants between commercial and military holding trailers, or between holding trailers and fuel/oxidizer pump rooms; or normal preventive maintenance activities including, but not limited to, seal changes; (4) handling and maintaining the propellants, unsymmetrical dimethyl hydrazine and inhibited red-fuming nitric acid, used in the LANCE missile system; (5) handling, transporting or working with toxic fuels/propellants by members assigned to the Air Force Rocket Propulsion Lab (AFRPL) who (A) directly manage and inspect the activities of crew members conducting operations involving experimental rocket propulsion systems and components; (B) directly monitor and set up measurement instruments in operational areas where contamination is suspected or may be physically present; (C) install and remove instrumentation devices from propulsion systems and components, (D) perform final test preparation and immediate safety inspection duties around pressurized, active systems during prerun and postrun test periods; or, (E) install and repair electrical systems; (6) handling, loading/unloading and transporting toxic fuels and oxidizers at the precision sled track while working with the liquid rocket sled, which uses JP-X (a mixture of jet fuel (JP-4) and unsymmetrical dimethyl hydrazine) and red fuming nitric acid and a propulsion; or (7) involvement with other toxic substances contained in missile or aircraft weapon system fuels or propellants as determined by the Secretary concerned. The entitlement to the pay provided for in this subsection is based upon the performance of such duty which has the potential for accidental or inadvertent exposure to highly toxic fuels or propellants or related substances and not upon actual quantifiable exposure to such substances. Therefore, neither this construction of the term nor the receipt of the pay

provided for in this subsection may be construed as indicating that any person entitled to such pay has been actually exposed to highly toxic fuels or propellants or related substances contrary to the provisions of any statute, Executive order, rule, or regulation relating to health or safety which is applicable to the uniformed services."

Sec. 2. This Executive Order shall be effective as of October 1, 1983.

THE WHITE HOUSE,

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

December 7, 1984

EXECUTIVE ORDER

- - - - -

AMENDING EXECUTIVE ORDER NO. 11157 AS IT RELATES TO PAY
FOR HAZARDOUS DUTY

By the authority vested in me as President of the United States of America by Section 301 (a) of Title 37 of the United States Code, and in order to define the scope of one category of hazardous duty, it is hereby ordered as follows:

Section 1. Executive Order No. 11157 of June 22, 1964, as amended, is further amended by striking out subsection (b) of Section 109 of Part I and inserting in lieu thereof the following:

"(b) The term 'duty involving the demolition of explosives' shall be construed to mean duty performed by members who, pursuant to competent orders and as a primary duty assignment (1) demolish by the use of explosives objects, obstacles, or explosives, or recover and render harmless, by disarming or demolition, explosives which have failed to function as intended or which have become a potential hazard; (2) participate as students or instructors in instructional training, including that in the field or fleet, for the duties described in clause (1) hereof, provided that live explosives are used in such training; (3) participate in proficiency training, including that in the field or fleet, for the maintenance of skill in the duties described in clause (1) hereof, provided that live explosives are used in such training; or (4) experiment with or develop tools, equipment, or procedures for the demolition and rendering harmless of explosives, provided that live explosives are used."

Sec. 2. This Order shall be effective immediately.

RONALD REAGAN

THE WHITE HOUSE,

December 6, 1984.

#

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to assure adequate funding for the cleanup of abandoned hazardous waste sites, and for other purposes.

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled,

SHORT TITLE AND TABLE OF CONTENTS

Section 1. This Act, together with the following table of contents, may be cited as the "Comprehensive Environmental Response, Compensation, and Liability Act Amendments of 1985".

TABLE OF CONTENTS

- Sec. 1. Short title and table of contents
- Sec. 2. Amendment of CERCLA
- Sec. 3. Statement of Findings and Purposes
- Sec. 4. Definitions

TITLE I--PROVISIONS RELATING PRIMARILY TO RESPONSE

- Sec. 101. Authority to Respond; Scope of Program
- Sec. 102. Statutory Limits on Removals
- Sec. 103. Permanent Remedies
- Sec. 104. Offsite Remedial Action
- Sec. 105. National Contingency Plan
- Sec. 106. Cooperative Agreements
- Sec. 107. Publicly Operated Facilities
- Sec. 108. Siting of Hazardous Waste Facilities
- Sec. 109. Community Involvement
- Sec. 110. Health Related Authorities
- Sec. 111. Compliance with Other Environmental Laws
- Sec. 112. Actions Under the National Contingency Plan
- Sec. 113. Natural Resources Damages
- Sec. 114. Response Claims
- Sec. 115. Indian Tribes
- Sec. 116. Preemption
- Sec. 117. State Cost Share

TITLE II--PROVISIONS RELATING PRIMARILY TO ENFORCEMENT

- Sec. 201. Civil Penalties for Non-Reporting
- Sec. 202. Contribution and Parties to Litigation
- Sec. 203. Access and Information Gathering
- Sec. 204. Administrative Orders for Section 104(b) Actions
- Sec. 205. Non-Trust Fund and Pre-Trust Fund Expenditures
- Sec. 206. Statute of Limitations
- Sec. 207. Pre-Enforcement Review
- Sec. 208. National Service of Process
- Sec. 209. Abatement Action
- Sec. 210. Federal Lien
- Sec. 211. Penalties
- Sec. 212. Federal Agency Settlements
- Sec. 213. Foreign Vessels

TITLE III--AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1954

<Reserved>

TITLE IV--MISCELLANEOUS PROVISIONS

- Sec. 401. Applicability of Amendments

AMENDMENT OF CERCLA

Sec. 2. Except as otherwise expressly provided, whenever in Title I, II, or IV of this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be a reference to a section or provision of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601 et seq.).

STATEMENT OF FINDINGS AND PURPOSES

Sec. 3.(a) The Congress hereby finds that --

(1) Releases and threats of releases of hazardous substances continue to pose a serious threat to public health and the environment; and

(2) A major source of such threat is uncontrolled hazardous waste facilities, where hazardous substances have been

disposed of in a manner that has resulted in, or that may in the future result in dangerous releases.

(b) In order to adequately protect human health and the environment from such releases, the Congress further finds it necessary to:

(1) continue a comprehensive Federal program focused on the cleanup of hazardous waste sites and releases or threatened releases of hazardous substances into the environment;

(2) strengthen existing enforcement authority so that responsible parties will bear responsibility for cleanup costs;

(3) create a viable and effective Federal-State partnership for cleanup efforts; and

(4) ensure that citizens be informed of and have an opportunity to comment on cleanup activities taking place within their community.

DEFINITIONS

Sec. 4. Section 101(14)(C) is amended by striking "hazardous waste" and inserting "substance" in lieu thereof, and by inserting "whether or not that substance would be considered a solid waste under the Act" after "Act" the first time that word appears.

TITLE I--PROVISIONS RELATING PRIMARILY TO RESPONSE

AUTHORITY TO RESPOND: SCOPE OF PROGRAM

Sec. 101.(a) Section 104(a)(1) is amended to read as follows:

"(a)(1) Whenever any hazardous substance is released or there is a substantial threat of such a release into the

environment which may present a risk to public health or the environment, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or the environment. The President shall give primary attention to those releases which he deems may present a public health threat. The President, in his discretion, may authorize the owner or operator of the vessel or facility from which the release or substantial threat of release emanates, or any other responsible party, to perform the response action if the President determines that such removal or remedial action will be done properly by the owner, operator, or other responsible party."

(b) Section 104(a) is further amended by striking paragraph (2) and inserting in lieu thereof the following:

"(2) The President shall not respond under this Act to a release or threat of a release:

(A) resulting from the extraction, beneficiation, or processing of ores and minerals which are covered under the Surface Mine Control and Reclamation Act of 1977;

(B) resulting from the lawful application of a pesticide product registered under Section 3, permitted under section 5, or exempted under Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act;

(C) to the extent it affects residential dwellings, business or community structures, or public or private domestic water supply wells, unless the release or threatened release emanates from a vessel or facility used for the deposition, storage, processing, treatment, transportation, or disposal of hazardous substances;

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

(E) covered by and in compliance with a permit, as that term is defined in section 101(10), if such hazardous substance was specifically identified, reviewed, and made part of the public record in issuing the permit and the permit was designed to limit such substance.

(3) Notwithstanding paragraph (2) of this subsection, the President may respond to any release or threat of release of a hazardous substance in any form if he determines, in his discretion, that the release or threat of release constitutes a major public health or environmental emergency and that no other person has the authority or capability to respond to the emergency in a timely manner.".

(c) Section 104(b) is amended by striking the phrases, ", pollutant, or contaminant" and ", pollutants or contaminants" whenever they appear.

(d) Section 105 is amended by striking ", pollutant and contaminants,".

STATUTORY LIMITS ON REMOVALS

Sec. 102. Section 104(c)(1) is amended by striking "six months" and inserting "one year" in lieu thereof and inserting before "obligations" the following: "or (C) continued response action is otherwise appropriate and consistent with permanent remedy,".

PERMANENT REMEDIES

Sec. 103.(a) Section 104(c)(4) is amended by adding at the end thereof the following sentence: "For determining whether a remedy is cost-effective, the President may consider the permanence of such remedy.".

(b) Section 105(3) is amended by inserting before the semicolon at the end thereof the following: ", taking into account the permanence of any remedial measures".

OFFSITE REMEDIAL ACTION

Sec. 104. Section 101(24) is amended by striking the last sentence of the paragraph; striking the period after "welfare" the third time that word appears, and inserting a semicolon in lieu thereof, striking "or" before "contaminated materials" and inserting "and associated" in lieu thereof; and inserting before the period after "environment" the third time that word appears, the following: ", as well as the

offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.".

NATIONAL CONTINGENCY PLAN

Sec. 105.(a) Section 105(8)(B), is amended by striking "at least four hundred of" when it appears.

(b) Section 105(8)(B) is further amended by striking the phrase "at least" following the word "facilities" the second time it appears and by inserting "A State shall be allowed to designate its highest priority facility only once." after the third full sentence thereof.

COOPERATIVE AGREEMENTS

Sec. 106.(a) Section 104(d)(1) is amended to read as follows:

"(d)(1) Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President, in his discretion and subject to such terms as he may prescribe, may enter into a contract or cooperative agreement covering a specific facility or facilities with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 105(8) of this title and to be reimbursed from the Fund for reasonable response costs incurred pursuant to such contract or cooperative agreement. Any contract or cooperative agreement made hereunder is subject to the cost-sharing provisions of subsection (c) of this section.".

(b) Section 101(25) is amended by striking "and" and by inserting before the semicolon at the end thereof the following: ", and enforcement activities related thereto".

PUBLICLY OPERATED FACILITIES

Sec. 107. Section 104(c)(3)(C)(ii) is amended to read as follows:

"(ii) at least 75 per centum or such greater amount as the President may deem appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release from a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For purposes of this clause only, "facility" does not include navigable waters or the beds underlying those waters."

SITING OF HAZARDOUS WASTE FACILITIES

Sec. 108. Section 104(c) is amended by adding at the end thereof the following new paragraph:

"(5)(A) Effective two years after the date of enactment of this paragraph, the President shall not initiate any response actions pursuant to this section, except for the provision of alternative drinking water supplies or the temporary relocation of affected individuals from their residential dwellings, neither to exceed one year, unless the State in which the release occurs first provides assurances deemed adequate by

the President that the State will assure the availability of hazardous waste treatment or disposal facilities, either within that State or pursuant to a regional agreement, acceptable to the President with adequate capacity for the treatment, or disposal of all hazardous wastes that are reasonably expected to be generated within that State during a period of time specified by the President by regulation.

(B)(i) Notwithstanding subparagraph (A) of this paragraph, the President may take response action under this section if he determines, in his discretion, that a major public health or environmental emergency exists.

(ii) Notwithstanding subsection (c) of this section, the President shall not provide alternative drinking water supplies or the temporary relocation of affected individuals from their residential dwellings pursuant to subparagraph (A) of this paragraph or response pursuant to subparagraph (B)(1) of this paragraph, unless the State in which the release occurs provides assurances that the State will pay or assure payment of 40 percent of those costs, or at least 80 percent of those costs for actions related to facilities operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein.

(C) Effective on the date of enactment of this paragraph, in addition to the cost share required by paragraph (3) of this subsection, the State shall pay all additional costs associated with any out-of-State or, if the State is party to a regional

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agreement for the treatment or disposal of hazardous substances, out-of-region transportation of hazardous substances resulting from response actions taken pursuant to this section."

COMMUNITY INVOLVEMENT

Sec. 109. Section 104(c) is amended by adding after new paragraph (5) the following new paragraph:

"(6) Before selection or approval of any remedial action to be undertaken by the United States or a State or any other person under this section or section 106 of this Act, notice of and an opportunity to comment on the proposed action shall be afforded to the public."

HEALTH RELATED AUTHORITIES

Section 110.(a) Section 104(i) is amended by inserting "(1)" after "(i)"; striking the remaining part of the sentence following "Registry", and inserting a period in lieu thereof; inserting "(A)" before the second sentence of subsection (i); and adding the following:

" : (i) in support of response actions and because of the immediate need to protect public health in the event of a release or threatened release of a hazardous substance, and upon request of the Administrator of the Environmental Protection Agency, State officials, or local officials, may provide health consultations, health assessments, and other technical assistance relating to the health effects of exposure to hazardous substances; and

(ii) to improve the ability to render future public health judgments and recommendations, and to further scientific knowledge of the health effects of hazardous substances, develop and conduct epidemiological studies, including pilot studies."

(b) Section 104(i) is further amended by inserting "(B)" before the third sentence thereof, striking "In addition," capitalizing "said", and striking all of paragraph (1) and inserting in lieu thereof the following:

"(i) in cooperation with the States, Indian tribes, and with other Federal and local officials, establish and maintain appropriate registries of serious diseases and illnesses or registries of persons exposed to hazardous substances through the environment, whenever their inclusion in such registries would be scientifically appropriate or valuable for specific scientific studies or for long-term follow-up;"

(c) Section 104(i) is further amended by striking "(2)" and inserting "(ii)" in lieu thereof, striking "(3)" and inserting "(iii)" in lieu thereof, and striking all of paragraph (4) and inserting in lieu thereof the following:

"(iv) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, assist, and consult with private or public health care providers in the provision of medical care and testing of exposed individuals, including the collection and laboratory analysis of specimens as may be indicated by the specific exposure incident or any other assistance appropriate under the circumstances; and "

(d) Section 104(i) is further amended by striking "(5)" and inserting "(v)" in lieu thereof and striking the last sentence of the paragraph.

(e) Section 104(i) is further amended by adding the following new paragraph:

"(vi) All results of studies conducted under this subsection (other than health assessments) shall be reported or adopted only after appropriate peer review established by the Administrator of the Agency. Existing peer review systems may be used where appropriate.

(f) Section 104(i) is further amended by adding the following new paragraph at the end thereof:

"(2) The Administrator of the Environmental Protection Agency, or the head of the Agency to which response authority has been delegated, in his discretion, may perform exposure and risk assessments at a release for the purpose of determining appropriate action adequate to mitigate the public health threat. For purposes of this paragraph, "exposure and risk assessment" means the process for characterizing the potential risk from exposure to hazardous or toxic substances at a specific site, based upon hazard identification, dose-response assessment, exposure assessment, and risk characterization."

COMPLIANCE WITH OTHER ENVIRONMENTAL LAWS

Sec. 111. Section 104(c)(4), as amended by section 103(a) of this Act, is amended by inserting "(A)" after "(4)" and adding the following new subparagraph at the end thereof:

"(B)(i) When revising the national contingency plan pursuant to section 105, the President shall specify the extent to which removal or remedial actions selected under this section or secured under section 106(a) should comply with applicable or relevant standards and criteria of other Federal, State, or local environmental and public health laws. When making this determination, the President shall consider, among other factors, the following: the level of health or environmental protection provided by applicable or relevant standards and criteria; the technical feasibility of achieving such standards and criteria for different types of releases; the interim or permanent nature of particular response actions; the need for expeditious action; and the need to maintain availability of amounts from the Fund to respond to other releases which present or may present a threat to public health or the environment.

(ii) No permit shall be required under Federal, State, or local law for removal or remedial action selected under this section or secured under section 106(a).

(iii) Removal or remedial actions selected or taken under this section or secured under section 106(a) that have voluntarily met the provisions of section 102 of the National Environmental Policy Act of 1969 (Public Law 91-190, 83 Stat. 852) need not comply with any further public participation requirements which may be provided under this Act.

ACTIONS UNDER THE NATIONAL CONTINGENCY PLAN

Sec. 112. Section 107(d) is amended by inserting "response costs or" before "damages" both times that word appears and by inserting after "person" the second time that word appears the following: "and shall not alter the liability of any person who is liable or potentially liable under subsection (a) of this section who subsequently undertakes a response action.".

NATURAL RESOURCE DAMAGE CLAIMS

Sec. 113.(a) Section 107(f) is amended by inserting "(1)" after "(f)" and by adding at the end thereof the following new paragraphs:

"(2)(A) The President shall designate in the national contingency plan published under section 105 of this Act the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Clean Water Act. Such officials shall assess damages to natural resources for the purposes of this Act and section 311 of the Clean Water Act for those resources under their trusteeship, and may upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under a State's trusteeship.

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

311 of the Clean Water Act for those resources under their trusteeship.

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

(3) With respect to Federal facilities, Federal agencies with custody and accountability for those facilities shall be the only trustees of natural resources on, under, or above these facilities for purposes of the Act."

(b) Section 111(b) is amended by inserting a period after "title" the first time that word appears and striking all that follows.

(c) Section 111(c) is amended by striking paragraphs (1) and (2) and renumbering the following paragraphs accordingly.

(d) Section 111(e)(1) is amended by inserting "pursuant to subsection 111(a)(2)" after the word "Fund" the first time it appears.

(e) Section 111 is amended by striking subsections (d), (h), and (i) and relettering the remaining subsections accordingly.

(f) Section 111(a) is amended by striking paragraph (3) and renumbering the following paragraph.

(g) Section 111(e)(4) is amended by striking "Paragraphs (1) and (4) of subsection (a) of" and by replacing "t" with "T" in "this" when it appears.

RESPONSE CLAIMS

Sec. 114.(a) Section 111(a)(2) is amended to read as follows:

"(2) payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: Provided, however, that such costs must be approved under said plan and certified by the responsible Federal official prior to the taking of any action for which costs may be sought; and".

(b) Section 112 is amended by striking subsection (a) and inserting in lieu thereof the following:

"(a) No claims may be asserted against the Fund pursuant to section 111(a)(2) of this title unless such claim is presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107 of this title. In any case where the claim has not been satisfied within sixty days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment; provided, that no claim against the Fund may be considered during the pendency of an action in court to recover costs which are the subject of the claim.".

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(c) Section 112(b) is amended by striking "\$5,000" in paragraph (1) and inserting "\$25,000" in lieu thereof; and by striking all of paragraphs (2), (3) and (4) and inserting in lieu thereof the following:

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

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

(4) All administrative decisions made hereunder shall be in writing, with notification to all appropriate parties, and shall be rendered within ninety days of submission of a claim to an administrative law judge, unless all the parties to the claim agree in writing to an extension or unless the President, in his discretion, extends the time limit for a period not to exceed 60 days.

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

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

(d) Section 112 is amended by striking subsection (d) and relettering the following subsection.

INDIAN TRIBES

Sec. 115. (a) Section 101 is amended by striking "and" at the end of paragraph (31), striking the period at the end of paragraph (32) and inserting a semicolon in lieu thereof, and adding the following new paragraphs:

"(33) "Indian tribe" means any Indian tribe, band, nation, group, pueblo, or community for which, or for the members of which, the United States holds lands in trust; and

(34) "Indian lands" means lands, title to which is held by the United States in trust for an Indian or an Indian tribe or lands title to which is held by an Indian or an Indian tribe subject to a restriction against alienation."

(b) Section 104(c)(3), as amended by section 107 of this Act, is amended by inserting "or Indian tribe" after the word "State" the first four times that word appears and after phrase appears, and by adding a new sentence at the end thereof to read as follows: "The assurances required by this paragraph with respect to Indian lands may be made by the Department of the Interior if the Secretary of the Interior determines that an Indian tribe cannot provide those assurances."

(c) Section 104(d), as amended by section 106(a) of this Act, is amended by inserting "or Indian tribe" after the phrase "political subdivision thereof" wherever that phrase occurs, and by inserting "or Indian tribe" after the phrase "political subdivision."

(d) Section 103(a) is amended by striking the period at the end thereof and inserting, ", or to any affected Indian tribe."

(e) "Section 104(c)(2) is amended by adding, "or Indian tribe" after "States."

(f) Section 105(8)(B), as amended by section 105 of this Act, is further amended by inserting "or Indian tribe" after "State" the first time that word appears and after the phrase "established by the States"; and inserting "or Indian lands" after "State" the second time that word appears.

PREEMPTION

Sec. 116. Section 114 is amended by striking subsection (c) and relettering the following subsection accordingly.

STATE COST SHARE

Sec. 117. Section 104(c)(3)(C)(i) is amended by striking "10" and inserting "20" in lieu thereof.

TITLE II--PROVISIONS RELATING PRIMARILY TO ENFORCEMENT

CIVIL PENALTIES FOR NON-REPORTING

Sec. 201. Section 103(b)(3) is amended by striking "\$10,000", inserting "\$25,000" in lieu thereof, and inserting before the last sentence the following: "Any such person also shall be liable to the United States for a civil penalty of not more than \$10,000 for each violation of this subsection."

Any civil penalty for violations of this subsection in excess of \$25,000 may be assessed in an action brought by the Attorney General in a United States district court pursuant to section 113. The Administrator may assess any penalty under this subsection for less than \$25,000, and such assessment shall become final unless, no later than 30 days after notice of the penalty is served, the person or persons named in the notice request a public hearing. Upon such request, the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures."

CONTRIBUTION AND PARTIES TO LITIGATION

Sec. 202. Section 107, as amended by section 205 and Title III of this Act, is amended by adding a new subsection to read as follows:

"(k)(1) In any civil or administrative action under this section or section 106, any claims for contribution or indemnification shall be brought only after entry of judgment or date of settlement in good faith.

(2) After judgment in any civil action under section 106 or under subsection (a) of this section, any defendant held liable in the action may bring a separate action for contribution against any other person liable or potentially liable under subsection (a). Such action shall be brought in accordance with section 113 and shall be governed by Federal law. Except as provided in paragraph (4) of the subsection, this subsection shall not impair any right of indemnity under existing law.

(3) When a person has resolved its liability to the United States or a State in a judicially approved good faith settlement, such person shall not be liable for claims for contribution under paragraph (2) of this subsection regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the settlement.

(4) Nothing in this subsection shall affect or modify in any way the rights of the United States, a State, or any person that has resolved its liability to the United States or a State in a good faith settlement to seek contribution or indemnification against any persons who are not party to the settlement. In any such contribution or indemnification action, the rights of a State or any person that has so resolved its liability shall be subordinate to the rights of the United States. Any contribution action brought under this paragraph shall be brought in accordance with section 113 and shall be governed by Federal law."

ACCESS AND INFORMATION GATHERING

Sec. 203. Section 104(e) is amended by striking "(2)" and inserting "(3)" in lieu thereof and by striking all of existing paragraph (1) and inserting in lieu thereof the following:

"(1) For the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this

title, any officer, employee, or representative of the President, duly designated by the President, or any duly designated officer, employee, or representative of a State under a contract or cooperative agreement, is authorized where there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance -- ✓

(A) to require any person who has or may have information relevant to (i) the identification or nature of materials generated, treated, stored, transported to, or disposed of at a facility, or (ii) the nature or extent of a release or threatened release of a hazardous substance at or from a facility, to furnish, upon reasonable notice, information or documents relating to such matters. In addition, upon reasonable notice, such person either shall grant to appropriate representatives access at all reasonable times to inspect all documents or records relating to such matters or shall copy and furnish to the representatives all such documents or records, at the option of such person;

(B) to enter at reasonable times any establishment or other place or property (i) where hazardous substances are, may be, or have been generated, stored, treated, disposed of, or transported from, (ii) from which or to which hazardous substances have been or may have been released, (iii) where such release is or may be threatened, or (iv) where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title; and

(C) to inspect and obtain samples from such establishment or other place or property or location of any suspected hazardous substance and to inspect and obtain samples of any

containers or labeling for suspected hazardous substances. Each such inspection shall be completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. If any analysis is made of such samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

(2)(A) If consent is not granted regarding a request made by a duly designated officer, employee, or representative under paragraph (1), the President, upon such notice and an opportunity for consultation as is reasonably appropriate under the circumstances, may issue an order to such person directing compliance with the request, and the President may ask the Attorney General to commence a civil action to compel compliance.

(B) In any civil action brought to obtain compliance with the order, the court shall, where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance: (i) in the case of interference with entry or inspection, enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection, unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or not in accordance

with law; and (ii) in the case of information or document requests, enjoin interference with such information or document requests or direct compliance with orders to provide such information or documents, unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or not in accordance with law. The court may assess a civil penalty not to exceed \$10,000 against any person who unreasonably fails to comply with the provisions of paragraph (1) or an order issued pursuant to paragraph (2).".

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

(4) Notwithstanding this subsection, entry to locations and access to information properly classified to protect the national security may be granted only to any officer, employee, or representative of the President who is properly cleared.".

ADMINISTRATIVE ORDERS FOR SECTION 104(b) ACTIONS

Sec. 204.(a) Section 104 is amended by adding a new subsection at the end thereof to read as follows:

"(j)(1) If the President determines that one or more responsible parties will properly carry out action under subsection (b) of this section, the President may enter into a consent administrative order with such party or parties for that purpose.

(2) The United States district court for the district in which the release has occurred or threatens to occur shall have jurisdiction to enforce the order, and any person who violates

or fails to obey such an order shall be liable to the United States for a civil penalty of not more than \$10,000 for each day in which such violation occurs or such failure to comply continues."

(b) Section 107(c)(3) is amended by striking "104 or".

NON-TRUST FUND AND PRE-TRUST FUND EXPENDITURES

Sec. 205. Section 107(a)(4) is amended by striking "and" from the end of subparagraph (B), striking the period from the end of subparagraph (C) and inserting "; and" in lieu thereof, and adding a new subparagraph at the end thereof to read as follows:

"(D) All other costs incurred by the United States Government subsequent to the enactment of the Resource Conservation and Recovery Act of 1976, in response to a release or threatened release of a hazardous substance from a facility used for the storage, treatment, or disposal of hazardous substances, where such person knew or should have known of the response action and the costs are not inconsistent with the response actions provided for in subsections 101(23) and (24) of this Act."

STATUTE OF LIMITATIONS

Sec. 206. Section 113, as amended by sections 207 and 208 of this Act, is amended by adding at the end thereof the following new subsection:

"(h)(1) No claim may be presented nor may an action be commenced under this title for recovery of the costs referred to in subsection (a) of section 107 more than six years after the date of completion of the response action. Provided, however, that within the limitation period set out herein a

State or the United States may commence an action under this title for recovery of any cost or costs at any time after such cost or costs have been incurred.

(2) No action may be commenced for damages under this title more than three years from the date of discovery of the loss.

(3) No action for contribution may be commenced under section 107 more than three years after the date of judgment or the date of the good faith settlement.

(4) No action based on rights subrogated pursuant to section 112 by reason of payment of a claim may be commenced under this title more than three years after the date of payment of such claim."

PREF-ENFORCEMENT REVIEW

Sec. 207(a). Section 113(b) is amended by adding "s" to the word "subsection" and inserting "and (e)" after "(a)".

(b) Section 113 is further amended by adding at the end thereof the following new subsections:

"(e) No court shall have jurisdiction to review any challenges to response action selected under section 104 or any order issued under section 104, or to review any order issued under section 106(a), in any action other than (1) an action under section 107 to recover response costs or damages or for contribution or indemnification; (2) an action to enforce an order issued under section 106(a) or to recover a penalty for violation of such order; or (3) an action for reimbursement under section 106(b)(2).

(f) In any judicial action under section 106 or 107, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. The only objection which may be raised in any such judicial action under sections 106 or 107 is an objection to the response action which was raised with reasonable specificity to the President during the applicable period for public comment. In considering such objections, the court shall uphold the President's decision in selecting the response action unless the decision was arbitrary and capricious or otherwise not in accordance with law. If the court finds that the President's decision in selecting the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award the response costs or damages or other relief being sought to the extent that such relief is not inconsistent with the national contingency plan. In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made."

(c) Section 106(b) is amended by inserting "(1)" after "(b)" and adding a new paragraph at the end thereof to read as follows:

"(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within sixty days of completion of the required action, petition the

President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate that applies to investments of the Fund under section 223(b) of this Act.

(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within thirty days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund. To obtain reimbursement, the petitioner must establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order. Provided, however, that a petitioner who is liable for response costs under section 107(a) may recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in issuing the order was arbitrary and capricious or otherwise not in accordance with law. In any such case, the court may award to petitioner all reasonable response costs incurred pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law."

NATIONWIDE SERVICE OF PROCESS

Sec. 208. Section 113, as amended by section 207 of this Act, is amended by adding after new subsection (f) the following new subsection:

"(g) In any action by the United States under sections 104, 106, or 107, process may be served in any district where the defendant is found, or resides, or transacts business, or has appointed an agent for the service of process."

ABATEMENT ACTION

Sec. 209. Section 106(a) is amended by striking the phrases "or welfare" and "and welfare".

FEDERAL LIEN

Sec. 210. Section 107 is amended by adding after new subsection (1) the following new subsection:

"(1)(1) All costs and damages for which a person is liable to the United States under subsection (a) of this section shall constitute a lien in favor of the United States upon all real property and rights to such property belonging to such person that are subject to or affected by a removal or remedial action.

(2) The lien imposed by this subsection shall arise at the time costs are first incurred by the United States with respect to a response action under this Act and shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113(h).

(3) The lien imposed by this subsection shall not be valid as against any purchaser, holder of a security interest, or judgment lien creditor until notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law,

in which the real property subject to the lien is physically located. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is physically located. For purposes of this subsection, the terms "purchaser" and "security interest" shall have the definitions provided in 26 U.S.C. §6323(h). This paragraph does not apply with respect to any person who has or reasonably should have actual notice or knowledge that the United States has incurred costs giving rise to a lien under paragraph (1) of this subsection.

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

PENALTIES

Sec. 211.(a). Section 103(d)(2) is amended by striking "\$20,000" and inserting "\$25,000" in lieu thereof.

(b) Section 106(b) is amended by striking "\$5,000" and inserting "\$10,000" in lieu thereof.

FEDERAL AGENCY SETTLEMENTS

Section 212(a). Section 107(g) is amended by inserting "(1)" after "(g)" and by adding the following new paragraph at the end thereof:

"(2) The head of each such department, agency, or instrumentality or his designee may consider, compromise, and settle any claim or demand under this Act arising out of activities of his agency, in accordance with regulations prescribed by the Attorney General: Provided, that any award, compromise, or settlement in excess of \$2,500 shall be made only with the prior written approval of the Attorney General or his designee. Any such award, compromise, or settlement shall be paid by the agency concerned out of appropriations available to that agency. The acceptance of any payment under this paragraph shall be final and conclusive, and shall constitute a complete release of any claim against the United States and against the employees of the United States whose acts or omissions gave rise to the claim or demand, by reason of the same subject matter.

FOREIGN VESSELS

Section 213. Section 107(a)(1) is amended by striking "(otherwise subject to the jurisdiction of the United States).".

TITLE III--ADMENDMENTS TO THE INTERNAL REVENUE CODE OF 1954

<<Reserved>>

APPLICABILITY OF AMENDMENTS

Sec. 401. The amendments made by this Act to section 104(a) and (b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 shall not apply to releases listed as of January 1, 1985, in the national hazardous substance response plan published pursuant to section 105(8)(B) of that Act.