

1 “(b) QUALIFIED REMEDIATION EXPENDITURES.—

2 For purposes of this section, the term ‘qualified remedi-
3 ation expenditures’ means expenditures, whether or not
4 chargeable to capital account, in connection with—

5 “(1) the abatement or control of any hazardous
6 substance at the qualified contaminated site in ac-
7 cordance with an approved remediation plan,

8 “(2) the demolition of any structure (or portion
9 thereof) on such site if any portion of such structure
10 is demolished in connection with such abatement or
11 control,

12 “(3) the removal and disposal of property in
13 connection with the activities described in para-
14 graphs (1) and (2), and

15 “(4) the reconstruction of utilities in connection
16 with such activities.

17 Such term includes the cost of financial assurances (in-
18 cluding bonding) and insurance described in subsection
19 (g)(4).

20 “(c) QUALIFIED CONTAMINATED SITE.—For pur-
21 poses of this section—

22 “(1) IN GENERAL.—The term ‘qualified con-
23 taminated site’ means any area—

24 “(A) which is an eligible response site as
25 defined in section 101(41) of the Comprehen-

1 sive Environmental Response, Compensation,
2 and Liability Act of 1980,

3 “(B) which is held by the taxpayer for use
4 in a trade or business or for the production of
5 income, or which is property described in sec-
6 tion 1221(a)(1) in the hands of the taxpayer,

7 “(C) at or on which there has been a re-
8 lease (or threat of release) or disposal of any
9 hazardous substance, and

10 “(D) with respect to which an approved re-
11 mediation plan and an approved redevelopment
12 plan are both in effect.

13 “(2) NATIONAL PRIORITIES LISTED SITES NOT
14 INCLUDED.—Such term shall not include any site
15 which is on, or proposed for, the national priorities
16 list under section 105(a)(8)(B) of the Comprehen-
17 sive Environmental Response, Compensation, and
18 Liability Act of 1980 (as in effect on the date of the
19 enactment of this section).

20 “(d) HAZARDOUS SUBSTANCE.—For purposes of this
21 section—

22 “(1) IN GENERAL.—The term ‘hazardous sub-
23 stance’ means—

24 “(A) any substance which is a hazardous
25 substance as defined in section 101(14) of the

1 Comprehensive Environmental Response, Com-
2 pensation, and Liability Act of 1980,

3 “(B) any substance which is designated as
4 a hazardous substance under section 102 of
5 such Act, and

6 “(C) any petroleum product (within the
7 meaning of section 4612(a)(3)).

8 “(2) EXCEPTION.—Such term shall not include
9 any substance with respect to which a removal or re-
10 medial action is not permitted under section 104 of
11 such Act by reason of subsection (a)(3) thereof.

12 “(e) APPROVED REMEDIATION PLAN.—For purposes
13 of this section, the term ‘approved remediation plan’
14 means, with respect to any site, any plan for the conduct
15 of the activities described in paragraphs (1) through (4)
16 of subsection (b)—

17 “(1) which is approved by a State environ-
18 mental agency—

19 “(A) pursuant to a response program
20 which includes each of the elements listed in
21 section 128(a)(2) of the Comprehensive Envi-
22 ronmental Response, Compensation, and Liabil-
23 ity Act of 1980, and

24 “(B) after a determination by such agency
25 that the plan provides for the abatement or

1 control of the hazardous substances at such
2 site, and

3 “(2) which includes a written statement from
4 such agency that such site meets the requirements
5 of paragraphs (1)(A), (1)(C), and (2) of subsection
6 (c).

7 “(f) APPROVED REDEVELOPMENT PLAN.—For pur-
8 poses of this section, the term ‘approved redevelopment
9 plan’ means, with respect to any site, any plan for the
10 redevelopment of such site which is approved by the State
11 development agency after a determination by such agency
12 that the plan provides for the redevelopment of such site
13 in a manner beneficial to the State and local economy and
14 to the local community generally.

15 “(g) CREDIT MAY NOT EXCEED ALLOCATION.—

16 “(1) IN GENERAL.—The environmental remedi-
17 ation credit determined under this section with re-
18 spect to any qualified contaminated site shall not ex-
19 ceed the credit amount allocated under this section
20 by the State development agency to the taxpayer
21 with respect to such site.

22 “(2) TIME FOR MAKING ALLOCATION.—An allo-
23 cation shall be taken into account under paragraph
24 (1) for any taxable year only if made before the

1 close of the calendar year in which such taxable year
2 begins.

3 “(3) MANNER OF ALLOCATION.—

4 “(A) ALLOCATION MUST BE PURSUANT TO
5 PLAN.—No amount may be allocated under this
6 subsection to any qualified contaminated site
7 unless—

8 “(i) an approved remediation plan and
9 an approved redevelopment plan are both
10 in effect with respect to such site, and

11 “(ii) such amount is allocated pursu-
12 ant to a qualified allocation plan of the
13 State development agency.

14 “(B) QUALIFIED ALLOCATION PLAN.—For
15 purposes of this paragraph, the term ‘qualified
16 allocation plan’ means any plan—

17 “(i) which sets forth selection criteria
18 to be used to determine priorities of the
19 State development agency in allocating
20 credit amounts under this section, and

21 “(ii) which gives preference in allo-
22 cating credit amounts under this section to
23 qualified contaminated sites based on—

24 “(I) the extent of poverty,

1 “(II) whether the site is located
2 in an empowerment zone, enterprise
3 community, or renewal community,

4 “(III) whether the site is located
5 in the central business district of the
6 local jurisdiction,

7 “(IV) the extent of the required
8 environmental remediation,

9 “(V) the extent of the commer-
10 cial, industrial, or residential redevel-
11 opment of the site in addition to envi-
12 ronmental remediation,

13 “(VI) the extent of the financial
14 commitment to such redevelopment,

15 “(VII) the amount of new em-
16 ployment expected to result from such
17 redevelopment, and

18 “(VIII) whether it is reasonably
19 expected that under the approved re-
20 mediation plan at least 25 percent of
21 the estimated total qualified remedi-
22 ation expenditures will be borne by
23 one or more persons who are poten-
24 tially liable under section 107(a) of
25 the Comprehensive Environmental Re-

1 sponse, Compensation, and Liability
2 Act of 1980.

3 “(4) STATES MAY IMPOSE OTHER CONDI-
4 TIONS.—Nothing in this section shall be construed
5 to prevent any State from requiring—

6 “(A) assurances, including bonding, that
7 any project for which a credit amount is allo-
8 cated under this section will be properly com-
9 pleted or that the financial commitments of the
10 taxpayer are actually carried out,

11 “(B) that the taxpayer obtain insurance
12 which reimburses qualified remediation expendi-
13 tures in excess of the total estimated amount of
14 such expenditures, or

15 “(C) that the taxpayer obtain insurance
16 covering liability for personal injury, death, or
17 property damage.

18 “(h) STATE ENVIRONMENTAL REMEDIATION CREDIT
19 CEILING.—For purposes of this section—

20 “(1) LIMITATION.—The aggregate credit
21 amounts allocated by the State development agency
22 during any calendar year shall not exceed the State
23 environmental remediation credit ceiling applicable
24 to such State for such calendar year.

1 “(2) DETERMINATION OF LIMITATION
2 AMOUNT.—The State environmental remediation
3 credit ceiling applicable to any State for any cal-
4 endar year shall be an amount equal to the sum of—

5 “(A) such State’s share of the national en-
6 vironmental remediation credit limitation for
7 the calendar year,

8 “(B) the unused State environmental re-
9 mediation credit ceiling (if any) of such State
10 for the calendar year,

11 “(C) the amount of State environmental
12 remediation credit ceiling returned in the cal-
13 endar year, plus

14 “(D) the amount (if any) allocated under
15 paragraph (5) to such State by the Secretary.

16 “(3) NATIONAL ENVIRONMENTAL REMEDIATION
17 CREDIT LIMITATION.—

18 “(A) IN GENERAL.—The national environ-
19 mental remediation credit limitation for each
20 calendar year is \$500,000,000.

21 “(B) STATE’S SHARE OF LIMITATION.—A
22 State’s share of such limitation is the amount
23 which bears the same ratio to the limitation ap-
24 plicable under subparagraph (A) for the cal-

1 endar year as such State's population bears to
2 the population of the United States.

3 “(4) UNUSED STATE ENVIRONMENTAL REMEDI-
4 ATION CREDIT CEILING.—The unused State environ-
5 mental remediation credit ceiling for any calendar
6 year is the excess (if any) of—

7 “(A) the State environmental remediation
8 credit ceiling applicable to the State for the pre-
9 ceding calendar year (determined without re-
10 gard to paragraph (2)(B)), over

11 “(B) the aggregate environmental remedi-
12 ation credit amount allocated by the State for
13 such preceding year.

14 “(5) UNUSED ENVIRONMENTAL REMEDIATION
15 CREDIT ALLOCATED AMONG STATES AFTER 1-YEAR
16 CARRYFORWARD.—

17 “(A) IN GENERAL.—The excess unused en-
18 vironmental remediation credit of a State for
19 any calendar year shall be assigned to the Sec-
20 retary for allocation among qualified States for
21 the succeeding calendar year.

22 “(B) EXCESS UNUSED ENVIRONMENTAL
23 REMEDATION CREDIT.—For purposes of this
24 paragraph, the excess unused environmental re-

1 mediation credit of a State for any calendar
2 year is the excess (if any) of—

3 “(i) the unused State environmental
4 remediation credit ceiling for the preceding
5 calendar year, over

6 “(ii) the aggregate environmental re-
7 mediation credit amount allocated by the
8 State for such preceding year.

9 “(C) FORMULA FOR ALLOCATION OF EX-
10 CESS UNUSED ENVIRONMENTAL REMEDIATION
11 CREDIT AMONG STATES.—Rules similar to the
12 rules of clauses (iii) and (iv) of section
13 42(h)(3)(D) shall apply for purposes of this
14 paragraph.

15 “(6) POPULATION.—For purposes of this sub-
16 section, population shall be determined in accord-
17 ance with section 146(j).

18 “(7) INFLATION ADJUSTMENT.—In the case of
19 any calendar year after 2010, the \$500,000,000
20 amount contained in paragraph (3) shall be in-
21 creased by an amount equal to—

22 “(A) such dollar amount, multiplied by

23 “(B) the cost-of-living adjustment deter-
24 mined under section 1(f)(3) for the calendar
25 year, determined by substituting ‘calendar year

1 2009' for 'calendar year 1992' in subparagraph
2 (B) thereof.

3 Any increase determined under the preceding sen-
4 tence shall be rounded to the nearest multiple of
5 \$500,000.

6 “(8) TERMINATION.—The State environmental
7 remediation credit ceiling applicable to any State for
8 any calendar year beginning after 2014 shall be
9 zero.

10 “(i) OTHER DEFINITIONS AND SPECIAL RULE.—For
11 purposes of this section—

12 “(1) ELIGIBLE AREA.—

13 “(A) IN GENERAL.—The term ‘eligible
14 area’ means the entire area encompassed by a
15 local governmental unit or Indian tribal govern-
16 ment if such entire area contains at least 1 cen-
17 sus tract having a poverty rate of at least 20
18 percent.

19 “(B) USE OF EQUIVALENT COUNTY DIVI-
20 SIONS.—In the case of any area which is not
21 traced for population census tracts, the equiva-
22 lent county divisions (as defined by the Bureau
23 of the Census for purposes of defining poverty
24 areas) shall be treated as census tracts for pur-
25 poses of subparagraph (A).

1 “(C) USE OF CENSUS DATA.—For pur-
2 poses of this paragraph, population and poverty
3 rate shall be determined by the most recent de-
4 cennial census data available.

5 “(2) STATE ENVIRONMENTAL AGENCY.—The
6 term ‘State environmental agency’ means any State
7 agency specifically authorized by gubernatorial act
8 or State statute to carry out the functions and re-
9 sponsibilities of a State environmental agency for
10 purposes of this section.

11 “(3) STATE DEVELOPMENT AGENCY.—The
12 term ‘State development agency’ means any State
13 agency specifically authorized by gubernatorial act
14 or State statute to carry out the functions and re-
15 sponsibilities of a State development agency for pur-
16 poses of this section.

17 “(4) POSSESSIONS TREATED AS STATES.—The
18 term ‘State’ includes a possession of the United
19 States.

20 “(5) SPECIAL RULES FOR HAZARDOUS SUB-
21 STANCES THAT ARE PETROLEUM PRODUCTS.—In the
22 case of an area at or on which there has been a re-
23 lease (or threat of release) or disposal of any haz-
24 ardous substance that is a petroleum product, the
25 following rules shall apply:

1 “(A) The requirement of subsection
2 (c)(1)(A) shall be deemed to be met.

3 “(B) The requirement of subsection
4 (c)(1)(A) shall be deemed to be met.

5 “(C) Subsection (e)(2) shall be applied by
6 substituting ‘(1)(C) and (2)’ for ‘(1)(A), (1)(C),
7 and (2)’.

8 “(j) CREDIT MAY BE ASSIGNED.—

9 “(1) IN GENERAL.—If a taxpayer elects the ap-
10 plication of this subsection for any taxable year, the
11 amount of credit determined under this section for
12 such year which would (but for this subsection) be
13 allowable to the taxpayer shall be allowable to the
14 person designated by the taxpayer. The person so
15 designated shall be treated as the taxpayer for pur-
16 poses of this title (other than this paragraph).

17 “(2) TREATMENT OF AMOUNTS PAID FOR AS-
18 SIGNMENT.—If any amount is paid to the person
19 who assigns the credit determined under this sec-
20 tion, no portion of such amount shall be includible
21 in such person’s gross income.

22 “(k) RECAPTURE OF CREDIT IF APPROVED REMEDI-
23 ATION PLAN OR APPROVED REDEVELOPMENT PLAN NOT
24 PROPERLY COMPLETED.—

25 “(1) IN GENERAL.—If—

1 “(A) the State environmental agency deter-
2 mines that the approved remediation plan for
3 the qualified contaminated site was not properly
4 completed, or

5 “(B) the State development agency deter-
6 mines that the approved redevelopment plan for
7 such site was not properly completed,
8 the taxpayer’s tax under this chapter for the taxable
9 year in which such determination is made shall be
10 increased by the credit recapture amount.

11 “(2) CREDIT RECAPTURE AMOUNT.—For pur-
12 poses of paragraph (1), the credit recapture amount
13 is an amount equal to the sum of—

14 “(A) the aggregate decrease in the credits
15 allowed to the taxpayer under section 38 for all
16 prior taxable years which would have resulted if
17 the credit allowable by reason of this section
18 were not allowed, plus

19 “(B) interest at the overpayment rate es-
20 tablished under section 6621 on the amount de-
21 termined under subparagraph (A) for each
22 prior taxable year for the period beginning on
23 the due date for filing the return for the prior
24 taxable year involved.

1 No deduction shall be allowed under this chapter for
2 interest described in subparagraph (B).

3 “(3) SPECIAL RULES.—

4 “(A) TAX BENEFIT RULE.—The tax for
5 the taxable year shall be increased under para-
6 graph (1) only with respect to credits allowed
7 by reason of this section which were used to re-
8 duce tax liability. In the case of credits not so
9 used to reduce tax liability, the carryforwards
10 and carrybacks under section 39 shall be appro-
11 priately adjusted.

12 “(B) NO CREDITS AGAINST TAX.—Any in-
13 crease in tax under this subsection shall not be
14 treated as a tax imposed by this chapter for
15 purposes of determining the amount of any
16 credit or the tax imposed by section 55.

17 “(1) DENIAL OF DOUBLE BENEFIT.—

18 “(1) IN GENERAL.—No deduction shall be al-
19 lowed for that portion of the qualified remediation
20 expenditures otherwise allowable as a deduction for
21 the taxable year which is equal to the amount of the
22 credit determined for such taxable year under this
23 section.

24 “(2) SIMILAR RULE WHERE TAXPAYER CAP-
25 ITALIZES RATHER THAN DEDUCTS EXPENSES.—If—

1 “(A) the amount of the credit determined
2 for the taxable year under this section, exceeds

3 “(B) the amount allowable as a deduction
4 for such taxable year for qualified remediation
5 expenditures (determined without regard to
6 paragraph (1)),

7 the amount chargeable to capital account for the
8 taxable year for such expenditures shall be reduced
9 by the amount of such excess.

10 “(3) CONTROLLED GROUPS.—In the case of a
11 corporation which is a member of a controlled group
12 of corporations (within the meaning of section
13 41(f)(5)) or a trade or business which is treated as
14 being under common control with other trades or
15 businesses (within the meaning of section
16 41(f)(1)(B)), this subsection shall be applied under
17 rules prescribed by the Secretary similar to the rules
18 applicable under subparagraphs (A) and (B) of sec-
19 tion 41(f)(1).

20 “(m) COST OF REMOVAL OR REMEDIAL ACTION.—
21 The credit allowed under this section shall not be treated
22 as a cost of removal or remedial action incurred by the
23 United States for purposes of section 107(a)(4)(A) of the
24 Comprehensive Environmental Response, Compensation,
25 and Liability Act of 1980.”.

1 (b) GROSS INCOME EXCLUSION BY SITE OWNER OF
2 REMEDIATION EXPENDITURES PAID BY POTENTIALLY
3 RESPONSIBLE PARTIES.—Part III of subchapter B of
4 chapter 1 of such Code is amended by inserting after sec-
5 tion 139B the following new section:

6 **“SEC. 139C. QUALIFIED REMEDIATION CONTRIBUTIONS**
7 **FOR BROWNFIELD CLEANUP.**

8 “(a) IN GENERAL.—Gross income shall not include
9 any amount received as a qualified remediation contribu-
10 tion.

11 “(b) QUALIFIED REMEDIATION CONTRIBUTION.—
12 For purposes of this section, the term ‘qualified remedi-
13 ation contribution’ means any amount which is paid—

14 “(1) to or for the benefit of the owner of any
15 property,

16 “(2) by a person who is potentially liable with
17 respect to such property under section 107(a) of the
18 Comprehensive Environmental Response, Compensa-
19 tion, and Liability Act of 1980, and

20 “(3) for qualified remediation expenditures (as
21 defined in section 45R(b)) with respect to such prop-
22 erty.

23 “(c) DENIAL OF DOUBLE BENEFIT.—Notwith-
24 standing any other provision of this subtitle—

1 “(1) no deduction or credit shall be allowed (to
2 the person for whose benefit a qualified remediation
3 contribution is made) for, or by reason of, any ex-
4 penditure to the extent of the amount excluded
5 under this section with respect to such expenditure,
6 and

7 “(2) no increase in the basis of any property
8 shall result from any amount excluded under this
9 section with respect to such property.

10 “(d) TERMINATION.—This section shall not apply to
11 amounts paid after December 31, 2014.”.

12 (c) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
13 tion 38(b) of such Code is amended by striking “plus”
14 at the end of paragraph (34), by striking the period at
15 the end of paragraph (35) and inserting “, plus”, and by
16 adding at the end the following new paragraph:

17 “(36) the environmental remediation credit de-
18 termined under section 45R(a).”.

19 (d) CLERICAL AMENDMENTS.—

20 (1) The table of sections for subpart D of part
21 IV of subchapter A of chapter 1 of such Code is
22 amended by adding at the end the following new
23 item:

 “Sec. 45R. Environmental remediation credit”.

24 (2) The table of sections for part III of sub-
25 chapter B of chapter 1 of such Code is amended by

1 inserting after the item relating to section 139A the
2 following new item:

 “Sec. 139C. Remediation contributions by potentially responsible parties”.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2009.