

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1262

To amend the Federal Water Pollution Control Act to improve the enforcement and compliance programs.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 1995

Mr. PALLONE (for himself, Mr. SHAYS, Mr. GILCHREST, Mr. DEFazio, Mr. TOWNS, Ms. ROYBAL-ALLARD, Mr. STARK, Mrs. LOWEY, Mr. JACOBS, Mr. ROMERO-BARCELÓ, and Mr. JOHNSTON of Florida) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To amend the Federal Water Pollution Control Act to improve the enforcement and compliance programs.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clean Water Enforce-  
5 ment and Compliance Improvement Amendments Act of  
6 1995”.

7 **SEC. 2. FINDINGS.**

8 (a) IN GENERAL.—Congress finds that—

1           (1) a significant number of persons who have  
2           been issued permits under section 402 of the Fed-  
3           eral Water Pollution Control Act are in violation of  
4           such permits;

5           (2) current enforcement programs of the Ad-  
6           ministrator of the Environmental Protection Agency  
7           and the States fail to address violations of such per-  
8           mits in a timely and effective manner;

9           (3) often violations of such permits continue for  
10          a considerable period of time, yielding significant  
11          economic benefits for the violator and thus penaliz-  
12          ing similar facilities which act lawfully;

13          (4) penalties assessed and collected by the Ad-  
14          ministrator from violators of such permits are often  
15          less than the economic benefit gained by the violator;

16          (5) swift and timely enforcement by the Admin-  
17          istrator and the States of violations of such permits  
18          is necessary to increase levels of compliance with  
19          such permits; and

20          (6) actions of private citizens have been effec-  
21          tive in enforcing such permits and directing funds to  
22          environmental mitigation projects with \$11,000,000  
23          in penalties and interest having been recovered and  
24          deposited with the Treasury of the United States  
25          over the fiscal years 1988 through 1993.

1 (b) FINDING WITH RESPECT TO HARM CAUSED BY  
2 VIOLATIONS.—Section 101 of the Federal Water Pollution  
3 Control Act (33 U.S.C. 1251) is amended by adding at  
4 the end the following:

5 “(h) FINDING WITH RESPECT TO HARM CAUSED BY  
6 VIOLATIONS.—Congress finds that a discharge which re-  
7 sults in a violation of this Act or a regulation, standard,  
8 limitation, requirement, or order issued pursuant to this  
9 Act interferes with the restoration and maintenance of the  
10 chemical, physical, and biological integrity of any waters  
11 into which the discharge flows (either directly or through  
12 a publicly owned treatment works), including any waters  
13 into which the receiving waters flow, and, therefore, harms  
14 those who use or enjoy such waters and those who use  
15 or enjoy nearby lands or aquatic resources associated with  
16 those waters.

17 “(i) FINDING WITH RESPECT TO CITIZEN SUITS.—  
18 Congress finds that citizen suits are a valuable means of  
19 enforcement of this Act and urges the Administrator to  
20 take actions to encourage such suits, including providing  
21 information concerning violators to citizen groups to assist  
22 them in bringing suits, providing expert witnesses and  
23 other evidence with respect to such suits, and filing amicus  
24 curiae briefs on important issues related to such suits.”.

1 **SEC. 3. VIOLATIONS OF REQUIREMENTS OF LOCAL CON-**  
2 **TROL AUTHORITIES.**

3 Section 307(d) of Federal Water Pollution Control  
4 Act (33 U.S.C. 1317(d)) is amended to read as follows:

5 “(d) VIOLATIONS.—After the date on which (1) any  
6 effluent standard or prohibition or pretreatment standard  
7 or requirement takes effect under this section, or (2) any  
8 requirement imposed in a pretreatment program under  
9 section 402(a)(3) or 402(b)(8) of this Act takes effect, it  
10 shall be unlawful for any owner or operator of any source  
11 to operate such source in violation of the effluent stand-  
12 ard, prohibition, pretreatment standard, or requirement.”.

13 **SEC. 4. INSPECTIONS, MONITORING, AND PROVIDING IN-**  
14 **FORMATION.**

15 (a) APPLICABILITY OF REQUIREMENTS.—Section  
16 308(a) of the Federal Water Pollution Control Act (33  
17 U.S.C. 1318(a)) is amended by striking “the owner or op-  
18 erator of any point source” and inserting “a person sub-  
19 ject to a requirement of this Act”.

20 (b) PUBLIC ACCESS TO INFORMATION.—The first  
21 sentence of section 308(b) of such Act is amended—

22 (1) by inserting “(including information con-  
23 tained in the Permit Compliance System of the En-  
24 vironmental Protection Agency)” after “obtained  
25 under this section”;

26 (2) by inserting “made” after “shall be”; and

1           (3) by inserting “by computer telecommuni-  
2           cation and other means” after “public” the first  
3           place it appears.

4           (c) PUBLIC INFORMATION.—Section 308 of such Act  
5 is further amended by adding at the end the following:

6           “(e) PUBLIC INFORMATION.—

7           “(1) POSTING OF NOTICE OF POLLUTED WA-  
8           TERS.—At each major point of public access (includ-  
9           ing, at a minimum, beaches, parks, recreation areas,  
10          marinas, and boat launching areas) to a body of  
11          navigable water that does not meet an applicable  
12          water quality standard or that is subject to a fishing  
13          and shell fishing ban, advisory, or consumption re-  
14          striction (issued by a Federal, State, or local author-  
15          ity) due to fish or shellfish contamination, the State  
16          within which boundaries all or any part of such body  
17          of water lies shall, either directly or through local  
18          authorities, post and maintain a clearly visible sign  
19          which—

20                 “(A) indicates the water quality standard  
21                 that is being violated or the nature and extent  
22                 of the restriction on fish or shellfish consump-  
23                 tion, as the case may be;

24                 “(B) includes (i) information on the envi-  
25                 ronmental and health effects associated with

1 the failure to meet such standard or with the  
2 consumption of fish or shellfish subject to the  
3 restriction, and (ii) a phone number for obtain-  
4 ing additional information relating to the viola-  
5 tion and restriction; and

6 “(C) will be maintained until the body of  
7 water is in compliance with the water quality  
8 standard or until all fish and shellfish consump-  
9 tion restrictions are terminated with respect to  
10 the body of water, as the case may be.

11 “(2) NOTICE OF DISCHARGES TO NAVIGABLE  
12 WATERS.—Except for permits issued to municipali-  
13 ties for discharges composed entirely of stormwater  
14 under section 402 of this Act, each permit issued  
15 under section 402 by the Administrator or by a  
16 State shall ensure compliance with the following  
17 requirements:

18 “(A) Every permittee shall conspicuously  
19 maintain at all public entrances to the facility  
20 a clearly visible sign which indicates that the  
21 facility discharges pollutants into navigable wa-  
22 ters and the location of such discharges; the  
23 name, business address, and phone number of  
24 the permittee; the permit number; and a loca-  
25 tion at which a copy of the permit and public

1 information required by this paragraph is main-  
2 tained and made available for inspection or a  
3 phone number for obtaining such information.

4 “(B) Each permittee which is a publicly  
5 owned treatment works shall include in each  
6 quarterly mailing of a bill to each customer of  
7 the treatment works information which indi-  
8 cates that the treatment works discharges pol-  
9 lutants into the navigable waters and the loca-  
10 tion of each of such discharges; the name, busi-  
11 ness address and phone number of the permit-  
12 tee; the permit number; a location at which a  
13 copy of the permit and public information re-  
14 quired by this paragraph is maintained and  
15 made available for inspection or a phone num-  
16 ber for obtaining such information; and a list of  
17 all violations of the requirements of the permit  
18 by the treatment works over the preceding 12-  
19 month period.

20 “(3) REGULATIONS.—

21 “(A) ISSUANCE.—The Administrator—

22 “(i) not later than 6 months after the  
23 date of the enactment of this subsection,  
24 shall propose regulations to carry out this  
25 subsection; and

1           “(ii) not later than 18 months after  
2           such date of enactment, shall issue such  
3           regulations.

4           “(B) CONTENT.—The regulations issued to  
5           carry out this subsection shall establish—

6           “(i) uniform requirements and proce-  
7           dures for identifying and posting bodies of  
8           water under paragraph (1);

9           “(ii) minimum information to be in-  
10          cluded in signs posted and notices issued  
11          pursuant to this subsection;

12          “(iii) uniform requirements and proce-  
13          dures for fish and shellfish sampling and  
14          analysis;

15          “(iv) uniform requirements for deter-  
16          mining the nature and extent of fish and  
17          shellfish bans, advisories, and consumption  
18          restrictions which—

19                  “(I) address cancer and  
20                  noncancer human health risks;

21                  “(II) take into account the ef-  
22                  fects of all fish and shellfish contami-  
23                  nants, including the cumulative and  
24                  synergistic effects;

1 “(III) assure the protection of  
2 subpopulations who consume higher  
3 than average amounts of fish and  
4 shellfish or are particularly susceptible  
5 to the effects of such contamination;

6 “(IV) address race, gender, eth-  
7 nic composition, or social and eco-  
8 nomic factors, based on the latest  
9 available studies of national or re-  
10 gional consumption by and impacts on  
11 such subpopulations unless more reli-  
12 able site-specific data is available;

13 “(V) are based on a margin of  
14 safety that takes into account the un-  
15 certainties in human health impacts  
16 from such contamination; and

17 “(VI) evaluate assessments of  
18 health risks of contaminated fish and  
19 shellfish that are used in pollution  
20 control programs developed by the Ad-  
21 ministrator under this Act.”.

22 (d) STATE REPORTS.—Section 305(b)(1) of such Act  
23 (33 U.S.C. 1315(b)(1)) is amended—

24 (1) by striking “and” at the end of subpara-  
25 graph (D);

1           (2) by striking the period at the end of sub-  
2 paragraph (E) and inserting “; and”; and

3           (3) by adding at the end the following:

4                   “(F) a list identifying bodies of water for  
5 which signs were posted under section  
6 308(e)(1) in the preceding year.”.

7 **SEC. 5. CIVIL PENALTIES.**

8           (a) ENFORCEMENT OF LOCAL PRETREATMENT RE-  
9 QUIREMENTS.—

10           (1) COMPLIANCE ORDERS.—

11                   (A) INITIAL ACTION.—Section 309(a)(1) of  
12 the Federal Water Pollution Control Act (33  
13 U.S.C. 1319(a)(1)) is amended by inserting  
14 after “404 of this Act,” the following: “or is in  
15 violation of any requirement imposed in a  
16 pretreatment program approved under section  
17 402(a)(3) or 402(b)(8) of this Act,”.

18                   (B) ISSUANCE OF ORDERS.—Section  
19 309(a)(3) of such Act is amended by inserting  
20 after “404 of this Act by a State,” the follow-  
21 ing: “or is in violation of any requirement im-  
22 posed in a pretreatment program approved  
23 under section 402(a)(3) or 402(b)(8) of this  
24 Act,”.

1           (2)           CRIMINAL           PENALTIES.—Section  
2           309(c)(3)(A) of such Act is amended by inserting  
3           after “Army or by a State,” the following: “or know-  
4           ingly violates any requirement imposed in a  
5           pretreatment program approved under section  
6           402(a)(3) or 402(b)(8) of this Act,”.

7           (3)           ADMINISTRATIVE    PENALTIES.—Section  
8           309(g)(1)(A) of such Act is amended by inserting  
9           after “404 by a State,” the following: “or has vio-  
10          lated any requirement imposed in a pretreatment  
11          program approved under section 402(a)(3) or  
12          402(b)(8) of this Act or an order issued by the Ad-  
13          ministrator under subsection (a) of this section,”.

14          (b) TREATMENT OF SINGLE OPERATIONAL UP-  
15          SETS.—

16               (1) CRIMINAL PENALTIES.—Section 309(c) of  
17               such Act is amended by striking paragraph (5) and  
18               redesignating paragraphs (6) and (7) as paragraphs  
19               (5) and (6), respectively.

20               (2) CIVIL PENALTIES.—Section 309(d) of such  
21               Act is amended by striking the last sentence.

22               (3)           ADMINISTRATIVE    PENALTIES.—Section  
23               309(g)(3) of such Act is amended by striking the  
24               last sentence.

1 (c) USE OF CIVIL PENALTIES FOR MITIGATION  
2 PROJECTS.—

3 (1) IN GENERAL.—Section 309(d) of such Act  
4 is amended by inserting after the second sentence  
5 the following: “The court may, in the court’s discre-  
6 tion, order that a civil penalty be used for carrying  
7 out mitigation projects which are consistent with the  
8 purposes of this Act and which enhance the public  
9 health or environment.”.

10 (2) CONFORMING AMENDMENT.—Section  
11 505(a) of such Act (33 U.S.C. 1365(a)) is amended  
12 by inserting before the period at the end of the last  
13 sentence the following: “, including ordering the use  
14 of a civil penalty for carrying out mitigation projects  
15 in accordance with such section 309(d)”.

16 (d) DETERMINATION OF AMOUNT OF PENALTIES.—

17 (1) CIVIL PENALTIES.—The second sentence of  
18 section 309(d) of such Act (33 U.S.C. 1319(d)) is  
19 amended by inserting “the amount of any penalty  
20 previously imposed on the violator by a court or ad-  
21 ministrative agency for the same violation or viola-  
22 tions,” after “economic impact of the penalty on the  
23 violator,”.

24 (2) ADMINISTRATIVE PENALTIES.—Section  
25 309(g)(3) of such Act is amended—

1 (A) by striking “or savings”; or

2 (B) by inserting “the amount of any pen-  
3 alty previously imposed on the violator by a  
4 court or administrative agency for the same vio-  
5 lation or violations,” after “resulting from the  
6 violation,”.

7 (e) LIMITATION ON DEFENSES.—Section 309(g)(1)  
8 of such Act is amended by adding at the end the following:  
9 “In a proceeding to assess or review a penalty under this  
10 subsection, the adequacy of consultation between the Ad-  
11 ministrator or the Secretary, as the case may be, and the  
12 State shall not be a defense to assessment or enforcement  
13 of such penalty.”.

14 (f) AMOUNTS OF ADMINISTRATIVE CIVIL PEN-  
15 ALTIES.—

16 (1) GENERAL RULE.—Section 309(g)(2) of  
17 such Act is amended to read as follows:

18 “(2) AMOUNT OF PENALTIES; NOTICE; HEAR-  
19 ING.—

20 “(A) MAXIMUM AMOUNT OF PENALTIES.—  
21 The amount of a civil penalty under paragraph  
22 (1) may not exceed \$25,000 per violation per  
23 day for each day during which the violation  
24 continues.

1           “(B) WRITTEN NOTICE.—Before issuing  
2           an order assessing a civil penalty under this  
3           subsection, the Administrator or the Secretary,  
4           as the case may be, shall give to the person to  
5           be assessed the penalty written notice of the  
6           Administrator’s or Secretary’s proposal to issue  
7           the order and the opportunity to request, within  
8           30 days of the date the notice is received by  
9           such person, a hearing on the proposed order.

10           “(C) HEARINGS NOT ON THE RECORD.—If  
11           the proposed penalty does not exceed \$25,000,  
12           the hearing shall not be subject to section 554  
13           or 556 of title 5, United States Code, but shall  
14           provide a reasonable opportunity to be heard  
15           and to present evidence.

16           “(D) HEARINGS ON THE RECORD.—If the  
17           proposed penalty exceeds \$25,000, the hearing  
18           shall be on the record in accordance with sec-  
19           tion 554 of title 5, United States Code. The  
20           Administrator and the Secretary may issue  
21           rules for discovery procedures for hearings  
22           under this subparagraph.”.

23           (2) CONFORMING AMENDMENTS.—Section  
24           309(g) of such Act is amended—

1 (A) in paragraph (1) by striking “class I  
2 civil penalty or a class II”;

3 (B) in the second sentence of paragraph  
4 (4)(C) by striking “(2)(A) in the case of a class  
5 I civil penalty and paragraph (2)(B) in the case  
6 of a class II civil penalty” and inserting “(2)”;  
7 and

8 (C) in the first sentence of paragraph (8)  
9 by striking “assessment—” and all that follows  
10 through “by filing” and inserting “assessment  
11 in the United States District Court for the Dis-  
12 trict of Columbia or in the district in which the  
13 violation is alleged to have occurred by filing”.

14 (g) STATE ENFORCEMENT ACTIONS AS BAR TO FED-  
15 ERAL ENFORCEMENT ACTIONS.—Section 309(g)(6)(A) of  
16 such Act is amended—

17 (1) by inserting “or” after the comma at the  
18 end of clause (i);

19 (2) by striking clause (ii); and

20 (3) in clause (iii)—

21 (A) by striking “, the Secretary, or the  
22 State” and inserting “or the Secretary”; and

23 (B) by striking “or such comparable State  
24 law, as the case may be,”.

1 (h) RECOVERY OF ECONOMIC BENEFIT.—Section  
2 309 of such Act is amended by adding at the end the  
3 following:

4 “(h) RECOVERY OF ECONOMIC BENEFIT.—

5 “(1) GENERAL RULE.—Notwithstanding any  
6 other provision of this section, any civil penalty as-  
7 sessed and collected under this section must be in an  
8 amount which is not less than the amount of the  
9 economic benefit (if any) resulting from the violation  
10 for which the penalty is assessed.

11 “(2) REGULATIONS.—Not later than 2 years  
12 after the date of the enactment of this subsection,  
13 the Administrator shall issue regulations establishing  
14 a methodology for calculating the economic benefits  
15 or savings resulting from violations of this Act.  
16 Pending issuance of such regulations, this subsection  
17 shall be in effect and economic benefits shall be cal-  
18 culated for purposes of paragraph (1) on a case-by-  
19 case basis.”.

20 (i) LIMITATION ON COMPROMISES.—Such section  
21 309 is further amended by adding at the end the following:

22 “(i) LIMITATION ON COMPROMISES OF CIVIL PEN-  
23 ALTIES.—Notwithstanding any other provision of this sec-  
24 tion, the amount of a civil penalty assessed under this sec-

1 tion may not be compromised below the amount deter-  
2 mined by adding—

3 “(1) the minimum amount required for recovery  
4 of economic benefit under subsection (h), to

5 “(2) 50 percent of the difference between the  
6 amount of the civil penalty assessed and such mini-  
7 mum amount.”.

8 (j) MINIMUM AMOUNT FOR SERIOUS VIOLATIONS.—

9 Such section 309 is further amended by adding at the end  
10 the following:

11 “(j) MINIMUM CIVIL PENALTIES FOR SERIOUS VIO-  
12 LATIONS AND SIGNIFICANT NONCOMPLIERS.—

13 “(1) SERIOUS VIOLATIONS.—Notwithstanding  
14 any other provision of this section (other than para-  
15 graph (2)), the minimum civil penalty which shall be  
16 assessed and collected under this section from a per-  
17 son—

18 “(A) for a discharge from a point source of  
19 a hazardous pollutant which exceeds or other-  
20 wise violates any applicable effluent limitation  
21 established by or under this Act by 20 percent  
22 or more, or

23 “(B) for a discharge from a point source  
24 of a pollutant (other than a hazardous pollut-  
25 ant) which exceeds or otherwise violates any ap-

1           plicable effluent limitation established by or  
2           under this Act by 40 percent or more,  
3           shall be \$1,000 for the first such violation in a 180-  
4           day period.

5           “(2) SIGNIFICANT NONCOMPLIERS.—Notwith-  
6           standing any other provision of this section, the min-  
7           imum civil penalty which shall be assessed and col-  
8           lected under this section from a person—

9           “(A) for the second or more discharge in  
10           a 180-day period from a point source of a haz-  
11           ardous pollutant which exceeds or otherwise vio-  
12           lates any applicable effluent limitation estab-  
13           lished by or under this Act by 20 percent or  
14           more,

15           “(B) for the second or more discharge in  
16           a 180-day period from a point source of a pol-  
17           lutant (other than a hazardous pollutant) which  
18           exceeds or otherwise violates any applicable ef-  
19           fluent limitation established by or under this  
20           Act by 40 percent or more,

21           “(C) for the fourth or more discharge in a  
22           180-day period from a point source of any pol-  
23           lutant which exceeds or otherwise violates the  
24           same effluent limitation, or

1           “(D) for not filing in a 180-day period 2  
2           or more reports in accordance with section  
3           402(r)(1),  
4           shall be \$5,000 for each of such violations.

5           “(3) MANDATORY INSPECTIONS FOR SIGNIFI-  
6           CANT NONCOMPLIERS.—The Administrator shall  
7           identify any person described in paragraph (2) as a  
8           significant noncomplier and shall conduct an inspec-  
9           tion described in section 402(q) of this Act of the fa-  
10          cility at which the violations were committed. Such  
11          inspections shall be conducted at least once in the  
12          180-day period following the date of the most recent  
13          violation which resulted in such person being identi-  
14          fied as a significant noncomplier.

15          “(4) ANNUAL REPORTING.—The Administrator  
16          shall transmit to Congress and to the Governors of  
17          the States, and shall publish in the Federal Register,  
18          on an annual basis a list of all persons identified as  
19          significant noncompliers under paragraph (3) in the  
20          preceding calendar year and the violations which re-  
21          sulted in such classifications.

22          “(5) HAZARDOUS POLLUTANT DEFINED.—For  
23          purposes of this subsection, the term ‘hazardous pol-  
24          lutant’ has the meaning the term ‘hazardous sub-  
25          stance’ has under subsection (c)(6) of this section.”.

1 (k) STATE PROGRAM.—Section 402(b)(7) of such Act  
2 (33 U.S.C. 1342(b)(7)) is amended to read as follows:

3 “(7) To abate violations of the permit or the  
4 permit program which shall include, beginning on  
5 the last day of the 2-year period beginning on the  
6 date of the enactment of the Clean Water Compli-  
7 ance and Enforcement Improvement Amendments  
8 Act of 1995, a penalty program comparable to the  
9 Federal penalty program under section 309 of this  
10 Act and which shall include at a minimum criminal,  
11 civil, and civil administrative penalties, and may in-  
12 clude other ways and means of enforcement, which  
13 the State demonstrates to the satisfaction of the Ad-  
14 ministrators are equally effective as the Federal pen-  
15 alty program;”.

16 (l) FEDERAL PROCUREMENT COMPLIANCE INCEN-  
17 TIVE.—Section 508(a) of such Act (33 U.S.C. 1368(a))  
18 is amended by inserting after the second comma “or who  
19 is identified under section 309(j)(3) of this Act,”.

20 **SEC. 6. NATIONAL POLLUTANT DISCHARGE ELIMINATION**  
21 **PERMITS.**

22 (a) WITHDRAWAL OF STATE PROGRAM APPROVAL.—  
23 Section 402(b) of the Federal Water Pollution Control Act  
24 (33 U.S.C. 1342(b)) is amended by striking “unless he  
25 determines that adequate authority does not exist:” and

1 inserting the following: “only when he determines that  
2 adequate authority exists and shall withdraw program ap-  
3 proval whenever he determines that adequate authority no  
4 longer exists:”.

5 (b) JUDICIAL REVIEW OF RULINGS ON APPLICA-  
6 TIONS FOR STATE PERMITS.—Section 402(b)(3) of such  
7 Act is amended by inserting “and to ensure that any inter-  
8 ested person who participated in the public comment proc-  
9 ess and any other person who could obtain judicial review  
10 of that action under any other applicable law has the right  
11 to judicial review of such ruling” before the semicolon at  
12 the end.

13 (c) INSPECTIONS FOR MAJOR INDUSTRIAL AND MU-  
14 NICIPAL DISCHARGERS.—Section 402(b) of such Act is  
15 amended—

16 (1) by striking “and” at the end of paragraph  
17 (8);

18 (2) by striking the period at the end of para-  
19 graph (9) and inserting a semicolon; and

20 (3) by adding at the end the following:

21 “(10) To ensure that any permit for a dis-  
22 charge from a major industrial or municipal facility,  
23 as defined by the Administrator by regulation, in-  
24 cludes conditions under which such facility will be

1 subject to at least annual inspections by the State  
2 in accordance with subsection (q) of this section;”.

3 (d) MONTHLY REPORTS FOR SIGNIFICANT INDUS-  
4 TRIAL USERS OF POTWS.—Section 402(b) of such Act  
5 is further amended by adding at the end the following:

6 “(11) To ensure that any permit for a dis-  
7 charge from a publicly owned treatment works in the  
8 State includes conditions under which the treatment  
9 works will require any significant industrial user of  
10 the treatment works, as defined by the Adminis-  
11 trator by regulation, to prepare and submit to the  
12 Administrator, the State, and the treatment works a  
13 monthly discharge monitoring report as a condition  
14 to using the treatment works;”.

15 (e) PERMITS REQUIRED FOR INTRODUCTION OF  
16 POLLUTANTS INTO POTWS.—Section 402(b) of such Act  
17 is further amended by adding at the end the following:

18 “(12) To ensure that, after the last day of the  
19 2-year period beginning on the date of the enact-  
20 ment of this paragraph, any significant industrial  
21 user, or other source designated by the Adminis-  
22 trator, introducing a pollutant into a publicly owned  
23 treatment works has, and operates in accordance  
24 with, a permit issued by the treatment works or the  
25 State for introduction of such pollutant; and”.

1 (f) GRANTING OF AUTHORITY TO POTWS FOR IN-  
2 SPECTIONS AND PENALTIES.—Section 402(b) of such Act  
3 is further amended by adding at the end the following:

4 “(13) To ensure that the State will grant to  
5 publicly owned treatment works in the State, not  
6 later than 3 years after the date of the enactment  
7 of this paragraph, authority, power, and responsibil-  
8 ity to conduct inspections under subsection (q) of  
9 this section and to assess and collect civil penalties  
10 and civil administrative penalties under paragraph  
11 (7) of this subsection.”.

12 (g) INSPECTION.—Section 402 of such Act is amend-  
13 ed by adding at the end the following:

14 “(q) INSPECTION.—

15 “(1) GENERAL RULE.—Each permit for a dis-  
16 charge into the navigable waters or introduction of  
17 pollutants into a publicly owned treatment works is-  
18 sued under this section shall include conditions  
19 under which the effluent being discharged will be  
20 subject to random inspections in accordance with  
21 this subsection by the Administrator or the State, in  
22 the case of a State permit program under this  
23 section.

24 “(2) MINIMUM STANDARDS.—The Adminis-  
25 trator shall establish minimum standards for inspec-

1 tions under this subsection. Such standards shall re-  
2 quire, at a minimum, the following:

3 “(A) An annual representative sampling by  
4 the Administrator or the State, in the case of  
5 a State permit program under this section, of  
6 the effluent being discharged; except that if the  
7 discharge is not from a major industrial or mu-  
8 nicipal facility such sampling shall be conducted  
9 at least once every 3 years.

10 “(B) An analysis of all samples collected  
11 under subparagraph (A) by a Federal or State  
12 owned and operated laboratory or a State ap-  
13 proved laboratory, other than one that is being  
14 used by the permittee or that is directly or indi-  
15 rectly owned, operated, or managed by the  
16 permittee.

17 “(C) An evaluation of the maintenance  
18 record of any treatment equipment of the  
19 permittee.

20 “(D) An evaluation of the sampling tech-  
21 niques used by the permittee.

22 “(E) A random check of discharge mon-  
23 itoring reports of the permittee for each 12-  
24 month period for the purpose of determining  
25 whether or not such reports are consistent with

1 the applicable analyses conducted under sub-  
2 paragraph (B).

3 “(F) An inspection of the sample storage  
4 facilities and techniques of the permittee.”.

5 (h) REPORTING.—Section 402 of such Act is further  
6 amended by adding at the end the following:

7 “(r) REPORTING.—

8 “(1) GENERAL RULE.—Each person holding a  
9 permit issued under this section which is determined  
10 by the Administrator to be a major industrial or mu-  
11 nicipal discharger of pollutants into the navigable  
12 waters shall prepare and submit to the Adminis-  
13 trator a monthly discharge monitoring report. Any  
14 other person holding a permit issued under this sec-  
15 tion shall prepare and submit to the Administrator  
16 quarterly discharge monitoring reports or more fre-  
17 quent discharge monitoring reports if the Adminis-  
18 trator requires. Such reports shall contain, at a min-  
19 imum, such information as the Administrator shall  
20 require by regulation.

21 “(2) REPORTING OF HAZARDOUS DIS-  
22 CHARGES.—

23 “(A) GENERAL RULE.—If a discharge  
24 from a point source for which a permit is issued  
25 under this section exceeds an effluent limitation

1 contained in such permit which is based on an  
2 acute water quality standard or any other dis-  
3 charge which may cause an exceedance of an  
4 acute water quality standard or otherwise is  
5 likely to cause injury to persons or damage to  
6 the environment or to pose a threat to human  
7 health and the environment, the person holding  
8 such permit shall notify the Administrator, in  
9 writing, of such discharge not later than 2  
10 hours after the later of the time at which such  
11 discharge commenced or the time at which the  
12 permittee knew or had reason to know of such  
13 discharge.

14 “(B) SPECIAL RULE FOR HAZARDOUS POL-  
15 LUTANTS.—If a discharge described in subpara-  
16 graph (A) is of a hazardous pollutant (as de-  
17 fined in section 309(j) of this Act), the person  
18 holding such permit shall provide the Adminis-  
19 trator with such additional information on the  
20 discharge as may be required by the Adminis-  
21 trator. Such additional information shall be  
22 provided to the Administrator within 24 hours  
23 after the later of the time at which such dis-  
24 charge commenced or the time at which the  
25 permittee became aware of such discharge.

1           Such additional information shall include, at a  
2           minimum, an estimate of the danger posed by  
3           the discharge to the environment, whether the  
4           discharge is continuing, and the measures taken  
5           or being taken (i) to remediate the problem  
6           caused by the discharge and any damage to the  
7           environment, and (ii) to avoid a repetition of  
8           the discharge.

9           “(3) SIGNATURE.—All reports filed under para-  
10          graph (1) must be signed by the highest ranking of-  
11          ficial having day-to-day managerial and operational  
12          responsibility for the facility at which the discharge  
13          occurs or, in the absence of such person, by another  
14          responsible high ranking official at such facility.  
15          Such highest ranking official shall be responsible for  
16          the accuracy of all information contained in such re-  
17          ports; except that such highest ranking official may  
18          file with the Administrator amendments to any such  
19          report if the report was signed in the absence of the  
20          highest ranking official by another high ranking offi-  
21          cial and if such amendments are filed within 7 days  
22          of the return of the highest ranking official.”.

23          (i) LIMITATION ON ISSUANCE OF PERMITS TO SIG-  
24          NIFICANT NONCOMPLIERS.—Section 402 of such Act is  
25          further amended by adding at the end the following:

1       “(s) SIGNIFICANT NONCOMPLIERS.—No permit may  
2 be issued under this section to any person (other than a  
3 publicly owned treatment works) identified under section  
4 309(j)(3) of this Act or to any other person owned or con-  
5 trolled by the identified person, owning or controlling the  
6 identified person, or under common control with the iden-  
7 tified person, until the Administrator or the State or  
8 States in which the violation or violations occur deter-  
9 mines that the condition or conditions giving rise to such  
10 violation or violations have been corrected. No permit ap-  
11 plication submitted after the date of the enactment of this  
12 subsection may be approved unless the application in-  
13 cludes a list of all violations of this Act by a person identi-  
14 fied under section 309(j) of this Act during the 3-year pe-  
15 riod preceding the date of submission of the application  
16 and evidence indicating whether the underlying cause of  
17 each such violation has been corrected.”.

18       (j) APPLICABILITY.—The amendments made by this  
19 section shall apply to permits issued before, on, or after  
20 the date of the enactment of this Act; except that—

21           (1) with respect to permits issued before such  
22       date of enactment to a major industrial or municipal  
23       discharger, such amendments shall take effect on the  
24       last day of the 1-year period beginning on such date  
25       of enactment; and

1           (2) with respect to all other permits issued be-  
2 fore such date of enactment, such amendments shall  
3 take effect on the last day of the 2-year period be-  
4 ginning on such date of enactment.

5 **SEC. 7. EXPIRED STATE PERMITS.**

6           Section 402(d) of the Federal Water Pollution Con-  
7 trol Act (33 U.S.C. 1342(d)) is amended by adding at the  
8 end the following:

9           “(5) EXPIRED STATE PERMITS.—In any case in  
10 which—

11                   “(A) a permit issued by a State for a dis-  
12 charge has expired,

13                   “(B) the permittee has submitted an appli-  
14 cation to the State for a new permit for the dis-  
15 charge, and

16                   “(C) the State has not acted on the appli-  
17 cation before the last day of the 18-month pe-  
18 riod beginning on the date the permit expired,  
19 the Administrator may issue a permit for the dis-  
20 charge under subsection (a).”.

21 **SEC. 8. COMPLIANCE SCHEDULE.**

22           Section 302(b)(2)(B) of the Federal Water Pollution  
23 Control Act (33 U.S.C. 1312(b)(2)(B)) is amended by  
24 adding at the end the following: “The Administrator may  
25 only issue a permit pursuant to this subparagraph for a

1 period exceeding 2 years if the Administrator makes the  
2 findings described in clauses (i) and (ii) of this subpara-  
3 graph on the basis of a public hearing.”.

4 **SEC. 9. EMERGENCY POWERS.**

5 Section 504 of the Federal Water Pollution Control  
6 Act (33 U.S.C. 1364) is amended to read as follows:

7 **“SEC. 504. COMMUNITY PROTECTION.**

8 “(a) ISSUANCE OF ORDERS; COURT ACTION.—Not-  
9 withstanding any other provision of this Act, whenever the  
10 Administrator finds that, because of an actual or threat-  
11 ened direct or indirect discharge of a pollutant, there may  
12 be an imminent and substantial endangerment to the pub-  
13 lic health or welfare (including the livelihood of persons)  
14 or the environment, the Administrator may issue such or-  
15 ders or take such action as may be necessary to protect  
16 public health or welfare or the environment and commence  
17 a suit (or cause it to be commenced) in the United States  
18 district court for the district where the discharge or threat  
19 occurs. Such court may grant such relief to abate the  
20 threat and to protect against the endangerment as the  
21 public interest and the equities require, enforce, and ad-  
22 judge penalties for disobedience to orders of the Adminis-  
23 trator issued under this section, and grant other relief ac-  
24 cording to the public interest and the equities of the case.

1       “(b) ENFORCEMENT OF ORDERS.—Any person who,  
2 without sufficient cause, violates or fails to comply with  
3 an order of the Administrator issued under this section,  
4 shall be liable for civil penalties to the United States in  
5 an amount not to exceed \$25,000 per day for each day  
6 on which such violation or failure occurs or continues.”.

7 **SEC. 10. CITIZEN SUITS.**

8       (a) SUITS FOR PAST VIOLATIONS.—Section 505 of  
9 the Federal Water Pollution Control Act (33 U.S.C. 1365)  
10 is amended—

11           (1) in subsection (a)(1) by inserting “to have  
12 violated or” after “who is alleged”;

13           (2) in subsection (b)(1)(A)(ii) by striking “oc-  
14 curs” and inserting “has occurred or is occurring”;  
15 and

16           (3) in subsection (f)(6) by inserting “has been  
17 or” after “which”.

18       (b) TIME LIMIT.—Section 505(b)(1)(A) of such Act  
19 is amended by striking “60 days” and inserting “30  
20 days”.

21       (c) EFFECT OF JUDGMENTS ON CITIZEN SUITS.—  
22 Section 505(b) of such Act is further amended—

23           (1) in paragraph (1)(B)—

24                   (A) by striking “, or a State”; and

1 (B) by striking “right.” and inserting  
2 “right and may obtain costs of litigation under  
3 subsection (d), or”; and

4 (2) by adding at the end the following: “The  
5 notice under paragraph (1)(A) need set forth only  
6 violations which have been specifically identified in  
7 the discharge monitoring reports of the alleged viola-  
8 tor. An action by a State under subsection (a)(1)  
9 may be brought at any time. No judicial action by  
10 the Administrator or a State shall bar an action for  
11 the same violation under subsection (a)(1) unless the  
12 action is by the Administrator and meets the re-  
13 quirements of this paragraph. No administrative ac-  
14 tion by the Administrator or a State shall bar a  
15 pending action commenced after February 4, 1987,  
16 for the same violation under subsection (a)(1) unless  
17 the action by the Administrator or a State meets the  
18 requirements of section 309(g)(6) of this Act.”.

19 (d) CONSENT JUDGMENTS.—Section 505(c)(3) of  
20 such Act is amended by adding at the end the following:  
21 “Consent judgments entered under this section may pro-  
22 vide that the civil penalties included in the consent judg-  
23 ment be used for carrying out mitigation projects in ac-  
24 cordance with section 309(d).”.

1           (e)    PRETREATMENT    REQUIREMENTS.—Section  
2 505(f)(4) of such Act is amended by striking “or  
3 pretreatment standards” and inserting “or pretreatment  
4 standard or requirement described in section 307(d)”.

5           (f)    EFFLUENT    STANDARD    DEFINITION.—Section  
6 505(f)(6) of such Act is amended by inserting “narrative  
7 or mathematical” before “condition”.

8           (g)    DEFINITION    OF    CITIZEN.—Section 505(g) of  
9 such Act is amended to read as follows:

10           “(g)    CITIZEN    DEFINED.—For purposes of this sec-  
11 tion, the term ‘citizen’ means a person or persons having  
12 an interest (including a recreational, aesthetic, environ-  
13 mental, health, or economic interest) which is, has been,  
14 or may be adversely affected and includes a person who  
15 uses or enjoys the waters into which the discharge flows  
16 (either directly or through a publicly owned treatment  
17 works), who uses or enjoys aquatic resources or nearby  
18 lands associated with the waters, or who would use or  
19 enjoy the waters, aquatic resources, or nearby lands if they  
20 were less polluted.”.

21           (h)    OFFERS    OF    JUDGMENT.—Section 505 of such  
22 Act is further amended by adding at the end the following:

23           “(i)    APPLICABILITY    OF    OFFERS    OF    JUDGMENT.—Of-  
24 fers of judgment pursuant to Rule 68 of the Federal Rules

1 of Civil Procedure shall not be applicable to actions  
2 brought under subsection (a)(1) of this section.”.

3 **SEC. 11. ISSUANCE OF SUBPOENAS.**

4 Section 509(a)(1) of the Federal Water Pollution  
5 Control Act (33 U.S.C. 1369(a)(1)) is amended by strik-  
6 ing “obtaining information under section 305 of this Act,  
7 or carrying out section 507(e) of this Act,” and inserting  
8 “carrying out this Act,”.

9 **SEC. 12. JUDICIAL REVIEW OF EPA ACTIONS.**

10 Section 509(b)(1) of the Federal Water Pollution  
11 Control Act (33 U.S.C. 1369(b)(1)) is amended—

12 (1) by inserting after the comma at the end of  
13 clause (D) “including a decision to deny a petition  
14 by interested person to veto an individual permit is-  
15 sued by a State,”;

16 (2) by inserting after the comma at the end of  
17 clause (E) “including a decision not to include any  
18 pollutant in such effluent limitation or other limita-  
19 tion if the Administrator has or is made aware of in-  
20 formation indicating that such pollutant is present  
21 in any discharge subject to such limitation,”; and

22 (3) by striking “and (G)” and inserting the fol-  
23 lowing: “(G) in issuing or approving any water qual-  
24 ity standard under section 303(c) or 303(d), (H) in  
25 issuing any water quality criterion under section

1 304(a), including a decision not to address any ef-  
2 fect of the pollutant subject to such criterion if the  
3 Administrator has or is made aware of information  
4 indicating that such effect may occur, and (J)’’.

5 **SEC. 13. NATIONAL CLEAN WATER TRUST FUND.**

6 (a) IN GENERAL.—Title V of the Federal Water Pol-  
7 lution Control Act (33 U.S.C. 1361–1377) is amended by  
8 redesignating section 519 as section 520 and by inserting  
9 after section 518 the following new section:

10 **“SEC. 519. NATIONAL CLEAN WATER TRUST FUND.**

11 “(a) CREATION OF TRUST FUND.—There is estab-  
12 lished in the Treasury of the United States a trust fund  
13 to be known as the ‘Clean Water Trust Fund’.

14 “(b) TRANSFERS TO TRUST FUND.—There are here-  
15 by appropriated to the Clean Water Trust Fund amounts  
16 equivalent to the penalties collected under section 309 of  
17 this Act and the penalties collected under section 505(a)  
18 of this Act (excluding any amounts ordered to be used to  
19 carry out mitigation projects under section 309 or 505(a),  
20 as the case may be).

21 “(c) ADMINISTRATION OF TRUST FUND.—The Ad-  
22 ministrator shall administer the Clean Water Trust Fund.  
23 The Administrator may use moneys in the Fund to carry  
24 out inspections and enforcement activities pursuant to this  
25 Act. In addition, the Administrator may make such

1 amounts of money in the Fund as the Administrator de-  
2 termines appropriate available to carry out title VI of this  
3 Act.”.

4 (b) CONFORMING AMENDMENT TO STATE REVOLV-  
5 ING FUND PROGRAM.—Section 607 of such Act (33  
6 U.S.C. 1387) is amended—

7 (1) by inserting “(a) IN GENERAL.—” before  
8 “There is”; and

9 (2) by adding at the end the following:

10 “(b) TREATMENT OF TRANSFERS FROM CLEAN  
11 WATER TRUST FUND.—For purposes of this title,  
12 amounts made available from the Clean Water Trust  
13 Fund under section 519 of this Act to carry out this title  
14 shall be treated as funds authorized to be appropriated  
15 to carry out this title and as funds made available under  
16 this title.”.

17 **SEC. 14. APPLICABILITY.**

18 Sections 101(h), 309(g)(6)(A), 505(a)(1), 505(b),  
19 505(g), and 505(i) of the Federal Water Pollution Control  
20 Act, as inserted or amended by this Act, shall be applica-  
21 ble to all cases pending under such Act on the date of  
22 the enactment of this Act and all cases brought on or after  
23 such date of enactment relating to violations which oc-  
24 curred before such date of amendment.

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