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H. R. 961

IN THE SENATE OF THE UNITED STATES

MAY 18 (legislative day, MAY 15), 1995
Received; read twice and referred to the Committee on Environment and Public Works

AN ACT

To amend the Federal Water Pollution Control Act.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Clean Water Amendments of 1995''.

1 (b) TABLE OF CONTENTS.—

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SEC. 2. DEFINITION.

In this Act, the term ''Administrator'' means the Administrator of the Environmental Protection Agency.

SEC. 3. AMENDMENT OF FEDERAL WATER POLLUTION CONTROL ACT.

Except as otherwise expressly provided, whenever in 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 made to a section or other provision of the Federal Water Pollution Control Act (33 U.S.C. 1251–1387).

TITLE I—RESEARCH AND RELATED PROGRAMS

SEC. 101. NATIONAL GOALS AND POLICIES.

(a) NONPOINT SOURCE POLLUTION; STATE STRATEGIES.—Section 101(a) (33 U.S.C. 1251(a)) is amended—

(1) by striking ''and'' at the end of paragraph (6);

(2) in paragraph (7)—

(A) by inserting '', including public and private sector programs using economic incentives,'' after ''programs'';

(B) by inserting ‘‘, including stormwater,’’ after ‘‘nonpoint sources of pollution’’ the first place it appears; and

(C) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

‘‘(8) it is the national policy to support State efforts undertaken in consultation with tribal and local governments to identify, prioritize, and implement water pollution prevention and control strategies;’’.

(b) ROLE OF STATE, TRIBAL, AND LOCAL GOVERNMENTS.—Section 101(a) is further amended by adding at the end the following:

‘‘(9) it is the national policy to recognize, support, and enhance the role of State, tribal, and local governments in carrying out the provisions of this Act;’’.

(c) RECLAMATION AND REUSE.—

(1) RECLAMATION.—Section 101(a)(4) is amended by inserting after ‘‘works’’ the following: ‘‘and to reclaim waste water from municipal and industrial sources’’.

(2) BENEFICIAL REUSE.—Section 101(a) is further amended by adding at the end the following:

''(10) it is the national policy that beneficial reuse of waste water effluent and biosolids be encouraged to the fullest extent possible; and''.

(d) WATER USE EFFICIENCY.—Section 101(a) is further amended by adding at the end the following:

''(11) it is the national policy that water use efficiency be encouraged to the fullest extent possible.''.

(e) NET BENEFITS.—Section 101 is further amended by adding at the end the following:

''(h) NET BENEFITS.—It is the national policy that the development and implementation of water quality protection programs pursuant to this Act—

''(1) be based on scientifically objective and unbiased information concerning the nature and magnitude of risk; and

''(2) maximize net benefits to society in order to promote sound regulatory decisions and promote the rational and coherent allocation of society's limited resources and not unreasonably restrict outdoor recreation and other socially beneficial activities.''.

SEC. 102. RESEARCH, INVESTIGATIONS, TRAINING, AND INFORMATION.

(a) NATIONAL PROGRAMS.—Section 104(a) (33 U.S.C. 1254(a)) is amended—

(1) by striking ''and'' at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting ''; and''; and

(3) by adding at the end the following:

''(7) in cooperation with appropriate Federal, State, and local agencies, conduct, promote, and encourage to the maximum extent feasible, in watersheds that may be significantly affected by nonpoint sources of pollution, monitoring and measurement of water quality by means and methods that will help to identify the relative contributions of particular nonpoint sources.''.

(b) BASIC RESEARCH AND GRANTS TO LOCAL GOVERNMENTS.—Section 104(b)(3) (33 U.S.C. 1254(B)(3)) is amended to read as follows:

''(3) in cooperation with Federal, State and local agencies and public or private institutions, organizations, or individuals, conduct and promote a comprehensive program of basic research, experiments, and studies relating to causes, sources, effects, extent, prevention, and detection of water pollution and make grants to State water pollution control agencies, interstate agencies, local governments, other public or nonprofit private agencies, institu-

tions, organizations, and individuals for such purposes;''.

(c) TECHNICAL ASSISTANCE FOR RURAL AND SMALL TREATMENT WORKS.—Section 104(b) (33 U.S.C. 1254(b)) is amended—

(1) by striking ''and'' at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting a semicolon; and

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

''(8) make grants to States, local governments, and nonprofit organizations to provide technical assistance and training to rural and small publicly owned treatment works (including treatment works that utilize an alternative wastewater treatment system) to enable such treatment works to achieve and maintain compliance with the requirements of this Act; and

''(9) disseminate information to rural, small, and disadvantaged communities with respect to the planning, design, construction, and operation of treatment works.''.

(d) WASTEWATER TREATMENT IN IMPOVERISHED COMMUNITIES.—Section 104(q) (33 U.S.C. 1254(q)) is amended by adding at the end the following:

''(5) SMALL IMPOVERISHED COMMUNITIES.—

''(A) GRANTS.—The Administrator may make grants to States to provide assistance for planning, design, and construction of publicly owned treatment works and alternative wastewater treatment systems to provide wastewater services to rural communities of 3,000 or less that are not currently served by any sewage collection or wastewater treatment system and are severely economically disadvantaged, as determined by the Administrator.

''(B) AUTHORIZATION.—There is authorized to be appropriated to carry out this paragraph $50,000,000 per fiscal year for fiscal years 1996 through 2000.''.

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 104(u) (33 U.S.C. 1254(u)) is amended—

(1) by striking ''and'' before ''(6)''; and

(2) by inserting before the period at the end the following: ''; (7) not to exceed $21,243,100 per fiscal year for each of fiscal years 1996 through 2000 for carrying out the provisions of subsection (b)(3); and

(8) not to exceed $10,000,000 per fiscal year for each of fiscal years 1996 through 2000 for carrying out the provisions of subsections (b)(8) and (b)(9)''.

SEC. 103. STATE MANAGEMENT ASSISTANCE.

Section 106(a) (33 U.S.C. 1256(a)) is amended—

(1) by striking ''and'' before ''$75,000,000'';

(2) by inserting after ''1990'' the following: '', such sums as may be necessary for each of fiscal years 1991 through 1995, and $150,000,000 per fiscal year for each of fiscal years 1996 through 2000''; and

(3) by adding at the end the following: ''States or interstate agencies receiving grants under this section may use such funds to finance, with other States or interstate agencies, studies and projects on interstate issues relating to such programs.''.

SEC. 104. MINE WATER POLLUTION CONTROL.

Section 107 (33 U.S.C. 1257) is amended to read as follows:

''SEC. 107. MINE WATER POLLUTION CONTROL.

''(a) ACIDIC AND OTHER TOXIC MINE DRAINAGE.—The Administrator shall establish a program to demonstrate the efficacy of measures for abatement of the causes and treatment of the effects of acidic and other toxic mine drainage within qualified hydrologic units af-

fected by past coal mining practices for the purpose of restoring the biological integrity of waters within such units.

''(b) GRANTS.—

''(1) IN GENERAL.—Any State or Indian tribe may apply to the Administrator for a grant for any project which provides for abatement of the causes or treatment of the effects of acidic or other toxic mine drainage within a qualified hydrologic unit affected by past coal mining practices.

''(2) APPLICATION REQUIREMENTS.—An application submitted to the Administrator under this section shall include each of the following:

''(A) An identification of the qualified hydrologic unit.

''(B) A description of the extent to which acidic or other toxic mine drainage is affecting the water quality and biological resources within the hydrologic unit.

''(C) An identification of the sources of acidic or other toxic mine drainage within the hydrologic unit.

''(D) An identification of the project and the measures proposed to be undertaken to abate the causes or treat the effects of acidic or

other toxic mine drainage within the hydrologic unit.

"(E) The cost of undertaking the proposed abatement or treatment measures.

"(c) FEDERAL SHARE.—

"(1) IN GENERAL.—The Federal share of the cost of a project receiving grant assistance under this section shall be 50 percent.

"(2) LANDS, EASEMENTS, AND RIGHTS-OF-WAY.—Contributions of lands, easements, and rights-of-way shall be credited toward the non-Federal share of the cost of a project under this section but not in an amount exceeding 25 percent of the total project cost.

"(3) OPERATION AND MAINTENANCE.—The non-Federal interest shall bear 100 percent of the cost of operation and maintenance of a project under this section.

"(d) PROHIBITED PROJECTS.—No acidic or other toxic mine drainage abatement or treatment project may receive assistance under this section if the project would adversely affect the free-flowing characteristics of any river segment within a qualified hydrologic unit.

"(e) APPLICATIONS FROM FEDERAL ENTITIES.—Any Federal entity may apply to the Administrator for

a grant under this section for the purposes of an acidic or toxic mine drainage abatement or treatment project within a qualified hydrologic unit located on lands and waters under the administrative jurisdiction of such entity.

''(f) APPROVAL.—The Administrator shall approve an application submitted pursuant to subsection (b) or (e) after determining that the application meets the requirements of this section.

''(g) QUALIFIED HYDROLOGIC UNIT DEFINED.—For purposes of this section, the term 'qualified hydrologic unit' means a hydrologic unit—

''(1) in which the water quality has been significantly affected by acidic or other toxic mine drainage from past coal mining practices in a manner which adversely impacts biological resources; and

''(2) which contains lands and waters eligible for assistance under title IV of the Surface Mining and Reclamation Act of 1977.''.

SEC. 105. WATER SANITATION IN RURAL AND NATIVE ALASKA VILLAGES.

(a) IN GENERAL.—Section 113 (33 U.S.C. 1263) is amended by striking the section heading and designation and subsections (a) through (f) and inserting the following:

"SEC. 113. ALASKA VILLAGE PROJECTS AND PROGRAMS.

''(a) GRANTS.—The Administrator is authorized to make grants—

''(1) for the development and construction of facilities which provide sanitation services for rural and Native Alaska villages;

''(2) for training, technical assistance, and educational programs relating to operation and maintenance for sanitation services in rural and Native Alaska villages; and

''(3) for reasonable costs of administering and managing grants made and programs and projects carried out under this section; except that not to exceed 4 percent of the amount of any grant made under this section may be made for such costs.

''(b) FEDERAL SHARE.—A grant under this section shall be 50 percent of the cost of the program or project being carried out with such grant.

''(c) SPECIAL RULE.—The Administrator shall award grants under this section for project construction following the rules specified in subpart H of part 1942 of title 7 of the Code of Federal Regulations.

''(d) GRANTS TO STATE FOR BENEFIT OF VILLAGES.—Grants under this section may be made to the State for the benefit of rural Alaska villages and Alaska Native villages.

''(e) COORDINATION.—In carrying out activities under this subsection, the Administrator is directed to coordinate efforts between the State of Alaska, the Secretary of Housing and Urban Development, the Secretary of Health and Human Services, the Secretary of the Interior, the Secretary of Agriculture, and the recipients of grants.

''(f) FUNDING.—There is authorized to be appropriated $25,000,000 for fiscal years beginning after September 30, 1995, to carry out this section.''.

(b) CONFORMING AMENDMENT.—Section 113(g) is amended by inserting after ''(g)'' the following: ''DEFINITIONS.—''.

SEC. 106. AUTHORIZATION OF APPROPRIATIONS FOR CHESAPEAKE PROGRAM.

Section 117(d) (33 U.S.C. 1267(d)) is amended—

(1) in paragraph (1), by inserting ''such sums as may be necessary for fiscal years 1991 through 1995, and $3,000,000 per fiscal year for each of fiscal years 1996 through 2000'' after ''1990,''; and

(2) in paragraph (2), by inserting ''such sums as may be necessary for fiscal years 1991 through 1995, and $18,000,000 per fiscal year for each of fiscal years 1996 through 2000'' after ''1990,''.

SEC. 107. GREAT LAKES MANAGEMENT.

(a) GREAT LAKES RESEARCH COUNCIL.—

(1) IN GENERAL.—Section 118 (33 U.S.C. 1268) is amended—

(A) in subsection (a)(3)—

(i) by striking subparagraph (E) and inserting the following:

''(E) 'Council' means the Great Lakes Research Council established by subsection (d)(1);'';

(ii) by striking ''and'' at the end of subparagraph (I);

(iii) by striking the period at the end of subparagraph (J) and inserting ''; and''; and

(iv) by adding at the end the following:

''(K) 'Great Lakes research' means the application of scientific or engineering expertise to explain, understand, and predict a physical, chemical, biological, or socioeconomic process, or the interaction of 1 or more of the processes, in the Great Lakes ecosystem.'';

(B) by striking subsection (d) and inserting the following:

''(d) GREAT LAKES RESEARCH COUNCIL.—

"(1) ESTABLISHMENT OF COUNCIL.—There is established a Great Lakes Research Council.

"(2) DUTIES OF COUNCIL.—The Council—

"(A) shall advise and promote the coordination of Federal Great Lakes research activities to avoid unnecessary duplication and ensure greater effectiveness in achieving protection of the Great Lakes ecosystem through the goals of the Great Lakes Water Quality Agreement;

"(B) not later than 1 year after the date of the enactment of this subparagraph and biennially thereafter and after providing opportunity for public review and comment, shall prepare and provide to interested parties a document that includes—

"(i) an assessment of the Great Lakes research activities needed to fulfill the goals of the Great Lakes Water Quality Agreement;

"(ii) an assessment of Federal expertise and capabilities in the activities needed to fulfill the goals of the Great Lakes Water Quality Agreement, including an inventory of Federal Great Lakes research

programs, projects, facilities, and personnel; and

''(iii) recommendations for long-term and short-term priorities for Federal Great Lakes research, based on a comparison of the assessments conducted under clauses (i) and (ii);

''(C) shall identify topics for and participate in meetings, workshops, symposia, and conferences on Great Lakes research issues;

''(D) shall make recommendations for the uniform collection of data for enhancing Great Lakes research and management protocols relating to the Great Lakes ecosystem;

''(E) shall advise and cooperate in—

''(i) improving the compatible integration of multimedia data concerning the Great Lakes ecosystem; and

''(ii) any effort to establish a comprehensive multimedia data base for the Great Lakes ecosystem; and

''(F) shall ensure that the results, findings, and information regarding Great Lakes research programs conducted or sponsored by the Federal Government are disseminated in a

timely manner, and in useful forms, to interested persons, using to the maximum extent practicable mechanisms in existence on the date of the dissemination, such as the Great Lakes Research Inventory prepared by the International Joint Commission.

''(3) MEMBERSHIP.—

''(A) IN GENERAL.—The Council shall consist of 1 research manager with extensive knowledge of, and scientific expertise and experience in, the Great Lakes ecosystem from each of the following agencies and instrumentalities:

''(i) The Agency.

''(ii) The National Oceanic and Atmospheric Administration.

''(iii) The National Biological Service.

''(iv) The United States Fish and Wildlife Service.

''(v) Any other Federal agency or instrumentality that expends $1,000,000 or more for a fiscal year on Great Lakes research.

''(vi) Any other Federal agency or instrumentality that a majority of the Coun-

cil membership determines should be represented on the Council.

''(B) NONVOTING MEMBERS.—At the request of a majority of the Council membership, any person who is a representative of a Federal agency or instrumentality not described in subparagraph (A) or any person who is not a Federal employee may serve as a nonvoting member of the Council.

''(4) CHAIRPERSON.—The chairperson of the Council shall be a member of the Council from an agency specified in clause (i), (ii), or (iii) of paragraph (3)(A) who is elected by a majority vote of the members of the Council. The chairperson shall serve as chairperson for a period of 2 years. A member of the Council may not serve as chairperson for more than 2 consecutive terms.

''(5) EXPENSES.—While performing official duties as a member of the Council, a member shall be allowed travel or transportation expenses under section 5703 of title 5, United States Code.

''(6) INTERAGENCY COOPERATION.—The head of each Federal agency or instrumentality that is represented on the Council—

''(A) shall cooperate with the Council in implementing the recommendations developed under paragraph (2);

''(B) on written request of the chairperson of the Council, may make available, on a reimbursable basis or otherwise, such personnel, services, or facilities as may be necessary to assist the Council in carrying out the duties of the Council under this section; and

''(C) on written request of the chairperson, shall furnish data or information necessary to carry out the duties of the Council under this section.

''(7) INTERNATIONAL COOPERATION.—The Council shall cooperate, to the maximum extent practicable, with the research coordination efforts of the Council of Great Lakes Research Managers of the International Joint Commission.

''(8) REIMBURSEMENT FOR REQUESTED ACTIVITIES.—Each Federal agency or instrumentality represented on the Council may reimburse another Federal agency or instrumentality or a non-Federal entity for costs associated with activities authorized under this subsection that are carried out by the

other agency, instrumentality, or entity at the request of the Council.

''(9) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council.

''(10) EFFECT ON OTHER LAW.—Nothing in this subsection affects the authority of any Federal agency or instrumentality, under any law, to undertake Great Lakes research activities.'';

(C) in subsection (e)—

(i) in paragraph (1) by striking ''the Program Office and the Research Office shall prepare a joint research plan'' and inserting ''the Program Office, in consultation with the Council, shall prepare a research plan''; and

(ii) in paragraph (3)(A) by striking ''the Research Office, the Agency for Toxic Substances and Disease Registry, and Great Lakes States'' and inserting ''the Council, the Agency for Toxic Substances and Disease Registry, and Great Lakes States,''; and

(D) in subsection (h)—

(i) by adding ''and'' at the end of paragraph (1);

(ii) by striking ''; and'' at the end of paragraph (2) and inserting a period; and

(iii) by striking paragraph (3).

(2) CONFORMING AMENDMENT.—The second sentence of section 403(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1447b(a)) is amended by striking ''Great Lakes Research Office authorized under'' and inserting ''Great Lakes Research Council established by''.

(b) CONSISTENCY OF PROGRAMS WITH FEDERAL GUIDANCE.—Section 118(c)(2)(C) (33 U.S.C. 1268(c)(2)(C)) is amended by adding at the end the following: ''For purposes of this section, a State's standards, policies, and procedures shall be considered consistent with such guidance if the standards, policies, and procedures are based on scientifically defensible judgments and policy choices made by the State after consideration of the guidance and provide an overall level of protection comparable to that provided by the guidance, taking into account the specific circumstances of the State's waters.''.

(c) REAUTHORIZATION OF ASSESSMENT AND REMEDIATION OF CONTAMINATED SEDIMENTS PROGRAM.—

Section 118(c)(7) is amended by adding at the end the following:

"(D) REAUTHORIZATION OF ASSESSMENT AND REMEDIATION OF CONTAMINATED SEDIMENTS PROGRAM.—

"(i) IN GENERAL.—The Administrator, acting through the Program Office, in consultation and cooperation with the Assistant Secretary of the Army having responsibility for civil works, shall conduct at least 3 pilot projects involving promising technologies and practices to remedy contaminated sediments (including at least 1 full-scale demonstration of a remediation technology) at sites in the Great Lakes System, as the Administrator determines appropriate.

"(ii) SELECTION OF SITES.—In selecting sites for the pilot projects, the Administrator shall give priority consideration to—

"(I) the Ashtabula River in Ohio;

"(II) the Buffalo River in New York;

"(III) Duluth and Superior Harbor in Minnesota;

"(IV) the Fox River in Wisconsin;

"(V) the Grand Calumet River in Indiana; and

"(VI) Saginaw Bay in Michigan.

"(iii) DEADLINES.—In carrying out this subparagraph, the Administrator shall—

"(I) not later than 18 months after the date of the enactment of this subparagraph, identify at least 3 sites and the technologies and practices to be demonstrated at the sites (including at least 1 full-scale demonstration of a remediation technology); and

"(II) not later than 5 years after such date of enactment, complete at least 3 pilot projects (including at least 1 full-scale demonstration of a remediation technology).

"(iv) ADDITIONAL PROJECTS.—The Administrator, acting through the Program Office, in consultation and coopera-

tion with the Assistant Secretary of the Army having responsibility for civil works, may conduct additional pilot- and full-scale pilot projects involving promising technologies and practices at sites in the Great Lakes System other than the sites selected under clause (i).

''(v) EXECUTION OF PROJECTS.—The Administrator may cooperate with the Assistant Secretary of the Army having responsibility for civil works to plan, engineer, design, and execute pilot projects under this subparagraph.

''(vi) NON-FEDERAL CONTRIBUTIONS.—The Administrator may accept non-Federal contributions to carry out pilot projects under this subparagraph.

''(vii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subparagraph $3,500,000 for each of fiscal years 1996 through 2000.

''(E) TECHNICAL INFORMATION AND ASSISTANCE.—

"(i) IN GENERAL.—The Administrator, acting through the Program Office, may provide technical information and assistance involving technologies and practices for remediation of contaminated sediments to persons that request the information or assistance.

"(ii) TECHNICAL ASSISTANCE PRIORITIES.—In providing technical assistance under this subparagraph, the Administrator, acting through the Program Office, shall give special priority to requests for integrated assessments of, and recommendations regarding, remediation technologies and practices for contaminated sediments at Great Lakes areas of concern.

"(iii) COORDINATION WITH OTHER DEMONSTRATIONS.—The Administrator shall—

"(I) coordinate technology demonstrations conducted under this subparagraph with other federally assisted demonstrations of contaminated sediment remediation technologies; and

''(II) share information from the demonstrations conducted under this subparagraph with the other demonstrations.

''(iv) OTHER SEDIMENT REMEDIATION ACTIVITIES.—Nothing in this subparagraph limits the authority of the Administrator to carry out sediment remediation activities under other laws.

''(v) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subparagraph $1,000,000 for each of fiscal years 1996 through 2000.''.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) RESEARCH AND MANAGEMENT.—Section 118(e)(3)(B) (33 U.S.C. 1268(e)(3)(B)) is amended by inserting before the period at the end the following: '', such sums as may be necessary for fiscal year 1995, and $4,000,000 per fiscal year for each of fiscal years 1996, 1997, and 1998''.

(2) GREAT LAKES PROGRAMS.—Section 118(h) (33 U.S.C. 1268(h)) is amended—

(A) by striking ''and'' before ''$25,000,000''; and

(B) by inserting before the period at the end of the first sentence the following: ‘‘, such sums as may be necessary for fiscal years 1992 through 1995, and $17,500,000 per fiscal year for each of fiscal years 1996 through 2000’’.

TITLE II—CONSTRUCTION GRANTS

SEC. 201. USES OF FUNDS.

(a) NONPOINT SOURCE PROGRAM.—Section 201(g)(1) (33 U.S.C. 1281(g)(1)) is amended by striking the period at the end of the first sentence and all that follows through the period at the end of the last sentence and inserting the following: ‘‘and for any purpose for which a grant may be made under sections 319(h) and 319(i) of this Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution).’’.

(b) RETROACTIVE ELIGIBILITY.—Section 201(g)(1) is further amended by adding at the end the following: ‘‘The Administrator, with the concurrence of the States, shall develop procedures to facilitate and expedite the retroactive eligibility and provision of grant funding for facilities already under construction.’’.

SEC. 202. ADMINISTRATION OF CLOSEOUT OF CONSTRUCTION GRANT PROGRAM.

Section 205(g)(1) (33 U.S.C. 1285(g)(1)) is amended by adding at the end the following: ''The Administrator may negotiate an annual budget with a State for the purpose of administering the closeout of the State's construction grants program under this title. Sums made available for administering such closeout shall be subtracted from amounts remaining available for obligation under the State's construction grant program under this title.''.

SEC. 203. SEWAGE COLLECTION SYSTEMS.

Section 211(a) (33 U.S.C. 1291(a)) is amended—

(1) in clause (1) by striking ''an existing collection system'' and inserting ''a collection system existing on the date of the enactment of the Clean Water Amendments of 1995''; and

(2) in clause (2)—

(A) by striking ''an existing community'' and inserting ''a community existing on such date of enactment''; and

(B) by striking ''sufficient existing'' and inserting ''sufficient capacity existing on such date of enactment''.

SEC. 204. TREATMENT WORKS DEFINED.

(a) INCLUSION OF OTHER LANDS.—Section 212(2)(A) (33 U.S.C. 1292(2)(A)) is amended—

(1) by striking ''any works, including site'';

(2) by striking ''is used for ultimate'' and inserting ''will be used for ultimate''; and

(3) by inserting before the period at the end the following: ''and acquisition of other lands, and interests in lands, which are necessary for construction''.

(b) POLICY ON COST EFFECTIVENESS.—Section 218(a) (33 U.S.C. 1298(a)) is amended by striking ''combination of devices and systems'' and all that follows through ''from such treatment;'' and inserting ''treatment works;''.

SEC. 205. VALUE ENGINEERING REVIEW.

Section 218(c) (33 U.S.C. 1298(c)) is amended by striking ''$10,000,000'' and inserting ''$25,000,000''.

SEC. 206. GRANTS FOR WASTEWATER TREATMENT.

(a) COASTAL LOCALITIES.—The Administrator shall make grants under title II of the Federal Water Pollution Control Act to appropriate instrumentalities for the purpose of construction of treatment works (including combined sewer overflow facilities) to serve coastal localities. No less than $10,000,000 of the amount of such grants shall be used for water infrastructure improvements in New Orleans, no less than $3,000,000 of the amount of such grants shall be used for water infrastructure improvements in Bristol County, Massachusetts, and no less

than ⅓ of the amount of such grants shall be used to assist localities that meet both of the following criteria:

(1) NEED.—A locality that has over $2,000,000,000 in category I treatment needs documented and accepted in the Environmental Protection Agency's 1992 Needs Survey database as of February 4, 1993.

(2) HARDSHIP.—A locality that has wastewater user charges, for residential use of 7,000 gallons per month based on Ernst & Young National Water and Wastewater 1992 Rate Survey, greater than 0.65 percent of 1989 median household income for the metropolitan statistical area in which such locality is located as measured by the Bureau of the Census.

(b) FEDERAL SHARE.—Notwithstanding section 202(a)(1) of the Federal Water Pollution Control Act, the Federal share of grants under subsection (a) shall be 80 percent of the cost of construction, and the non-Federal share shall be 20 percent of the cost of construction.

(c) SMALL COMMUNITIES.—The Administrator shall make grants to States for the purpose of providing assistance for the construction of treatment works and alternative wastewater treatment systems to serve small communities as defined by the State; except that the term ''small communities'' may not include any locality with a

population greater than 75,000. Funds made available to carry out this subsection shall be allotted by the Administrator to the States in accordance with the allotment formula contained in section 604(a) of the Federal Water Pollution Control Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for making grants under this section $300,000,000 for fiscal year 1996. Such sums shall remain available until expended and shall be equally divided between subsections (a) and (c) of this section. Such authorization of appropriation shall take effect only if the total amount appropriated for fiscal year 1996 to carry out title VI of the Federal Water Pollution Control Act is at least $2,250,000,000.

TITLE III—STANDARDS AND ENFORCEMENT

SEC. 301. EFFLUENT LIMITATIONS.

(a) COMPLIANCE SCHEDULES.—Section 301(b) (33 U.S.C. 1311(b)) is amended—

(1) in paragraph (1)(C) by striking ''not later than July 1, 1977,'';

(2) by striking the period at the end and inserting ''within a reasonable period of time as determined by the Administrator or the State, as appro-

priate, considering facility planning, design, construction, and other implementation factors;''; and

(3) by striking '', and in no case later than March 31, 1989'' each place it appears.

(b) MODIFICATIONS FOR NONCONVENTIONAL POLLUTANTS.—

(1) GENERAL AUTHORITY.—Section 301(g)(1) (33 U.S.C. 1311(g)(1)) is amended by striking ''(when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F)) and any other pollutant which the Administrator lists under paragraph (4) of this subsection'' and inserting ''and any other pollutant covered by subsection (b)(2)(F)''.

(2) PROCEDURAL REQUIREMENTS FOR LISTING AND REMOVAL OF POLLUTANTS.—Section 301(g) (33 U.S.C. 1311(g)) is further amended by striking paragraphs (4) and (5).

(c) COAL REMINING.—Section 301(p)(2) (33 U.S.C. 1311(p)(2)) is amended by inserting before the period at the end the following: ''; except where monitoring demonstrates that the receiving waters do not meet such water quality standards prior to commencement of remining and where the applicant submits a plan which demonstrates to the satisfaction of the Administrator or the State, as

the case may be, that identified measures will be utilized to improve the existing water quality of the receiving waters''.

(d) PREEXISTING COAL REMINING OPERATIONS.—Section 301(p) (33 U.S.C. 1311) is amended by adding at the end the following:

''(5) PREEXISTING COAL REMINING OPERATIONS.—Any operator of a coal mining operation who conducted remining at a site on which coal mining originally was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977 shall be deemed to be in compliance with sections 301, 302, 306, 307, and 402 of this Act if—

''(A) such operator commenced remining at such operation prior to the adoption of this subsection in a State program approved under section 402 and performed such remining under a permit pursuant to the Surface Mining Control and Reclamation Act of 1977; and

''(B) the post-mining levels of pollutants (other than pH) discharged from such operation do not exceed the levels of pollutants discharged from the remined area before the coal remining operation began and the post-mining pH levels

of the discharges from the remined area are not reduced below the pH levels of the discharges from the remined area before the coal remining operation began.''.

SEC. 302. POLLUTION PREVENTION OPPORTUNITIES.

(a) INNOVATIVE PRODUCTION PROCESSES.—Subsection (k) of section 301 (33 U.S.C. 1311(k)) is amended to read as follows:

''(k) INNOVATIVE PRODUCTION PROCESSES, TECHNOLOGIES, AND METHODS.—

''(1) IN GENERAL.—In the case of any point source subject to a permit under section 402, the Administrator, with the consent of the State in which the point source is located, or the State in consultation with the Administrator, in the case of a State with an approved program under section 402, may, at the request of the permittee and after public notice and opportunity for comment, extend the deadline for the point source to comply with any limitation established pursuant to subsection (b)(1)(A), (b)(2)(A), or (b)(2)(E) and make other appropriate modifications to the conditions of the point source permit, for the purpose of encouraging the development and use of an innovative pollution prevention technology (including an innovative pro-

duction process change, innovative pollution control technology, or innovative recycling method) that has the potential to—

''(A) achieve an effluent reduction which is greater than that required by the limitation otherwise applicable;

''(B) meet the applicable effluent limitation to water while achieving a reduction of total emissions to other media which is greater than that required by the otherwise applicable emissions limitations for the other media;

''(C) meet the applicable effluent limitation to water while achieving a reduction in energy consumption; or

''(D) achieve the required reduction with the potential for significantly lower costs than the systems determined by the Administrator to be economically achievable.

''(2) LIMITATION AND NOTICE.—If the Administrator or a State extends the deadline for point source compliance and encourages the development and use of an innovative pollution prevention technology under paragraph (1), the Administrator or State shall encourage, to the maximum extent prac-

ticable, the use of technology produced in the United States.

''(3) DURATION OF EXTENSIONS.—The extension of the compliance deadlines under paragraph (1) shall not extend beyond the period necessary for the owner of the point source to install and use the innovative process, technology, or method in full-scale production operations, but in no case shall the compliance extensions extend beyond 3 years from the date for compliance with the otherwise applicable limitations.

''(4) CONSEQUENCES OF FAILURE.—In determining the amount of any civil or administrative penalty pursuant to section 309(d) or 309(g) for any violations of a section 402 permit during the extension period referred to in paragraph (1) that are caused by the unexpected failure of an innovative process, technology, or method, a court or the Administrator, as appropriate, shall take into account the permittee's good-faith efforts to implement the innovation and to comply with any interim limitations and may reduce or eliminate the penalty for such violation.

''(5) REPORT.—Not later than 1 year after the date of the enactment of this subsection, the Admin-

istrator shall review, analyze, and compile in a report information on innovative and alternative technologies which are available for preventing and reducing pollution of navigable waters, submit such report to Congress, and publish in the Federal Register a summary of such report and a notice of the availability of such report. The Administrator shall annually update the report prepared under this paragraph, submit the updated report to Congress, and publish in the Federal Register a summary of the updated report and a notice of its availability.

''(6) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the Administrator or a State to enforce, place conditions on, or otherwise regulate emissions into the air or the treatment, storage, or disposal of solid waste or require or enforce conditions on the manufacturing or processing of a chemical substance or mixture in any permit issued under this Act.''.

(b) POLLUTION PREVENTION PROGRAMS.—Section 301 (33 U.S.C. 1311) is amended—

(1) in subsection (l) by striking ''subsection (n)'' and inserting ''subsections (n), (q), and (r)''; and

(2) by adding at the end the following:

"(q) POLLUTION PREVENTION PROGRAMS.—

"(1) IN GENERAL.—The Administrator (with the concurrence of the State) or a State with an approved program under section 402, at the request of the permittee and after public notice and an opportunity for comment, may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(A), (b)(2)(A), or (b)(2)(E) of this section or section 306 and makes appropriate modifications to the conditions of the permit, or may modify the requirements of section 307, if the Administrator or State determines that pollution prevention measures or practices (including recycling, source reduction, and other measures to reduce discharges or other releases of pollutants from the facility to the environment beyond those otherwise required by law) together with such modifications will achieve an overall reduction in emissions to the environment (including emissions to water and air and disposal of solid wastes) from the facility at which the permitted discharge is located that is greater than would otherwise be achievable if the source complied with the requirements of subsection (b)(1)(A), (b)(2)(A), or (b)(2)(E) or section 306 or 307 and

will result in an overall net benefit to the environment.

''(2) TERM OF MODIFICATION.—A modification made pursuant to paragraph (1) shall extend for the term of the permit or, in the case of modifications under section 307(b), for up to 10 years, and may be extended further if the Administrator or State determines at the expiration of the initial modifications that such modifications will continue to enable the source to achieve greater emissions reduction than would otherwise be attainable.

''(3) NONEXTENSION OF MODIFICATION.—Upon expiration of a modification that is not extended further under paragraph (2), the source shall have a reasonable period of time, not to exceed 2 years, to come into compliance with otherwise applicable requirements of this Act.

''(4) LIMITATIONS ON MODIFICATIONS.—A modification of an otherwise applicable limitation or standard may not be made under this subsection if such modification—

''(A) will cause a receiving body of water that is meeting its designated use for all pollutants to no longer meet such use;

''(B) will prevent a receiving body of water that is not meeting its designated use for all pollutants from meeting such use; or

''(C) will cause the introduction of pollutants into a publicly owned treatment works that interferes with, passes through, or is otherwise incompatible with such works or will cause such works to violate its permit under section 402 of this Act.

''(5) GUIDANCE.—Not later than 270 days after the date of the enactment of this subsection, the Administrator shall publish guidance for determining whether a modification of an otherwise applicable limitation or standard under this subsection will achieve an overall reduction in emissions to the environment and result in an overall net benefit to the environment. In developing such guidance, the Administrator shall consult with the States and other interested parties.

''(6) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the Administrator or a State to enforce, place conditions on, or otherwise regulate emissions into the air or the treatment, storage, or disposal of solid waste or require or enforce conditions on the

manufacturing or processing of a chemical substance or mixture in any permit issued under this Act.

''(7) REPORT.—Not later than 3 years after the date of the enactment of this subsection, the Administrator shall submit to Congress a report on the implementation of this subsection and the emissions reductions achieved as a result of modifications made pursuant to this subsection.''.

(c) POLLUTION REDUCTION AGREEMENTS.—Section 301 is further amended by adding at the end the following:

''(r) POLLUTION REDUCTION AGREEMENTS.—

''(1) IN GENERAL.—The Administrator (with the concurrence of the State) or a State with an approved program under section 402, after public notice and an opportunity for comment, may issue a permit under section 402 which modifies the requirements of subsection (b) of this section or section 306 and makes appropriate modifications to the conditions of the permit, or may modify the requirements of section 307, if the Administrator or State determines that the owner or operator of the source of the discharge has entered into a binding contractual agreement with any other source of discharge in the same watershed to implement pollution reduction controls or measures beyond those otherwise re-

quired by law and that the agreement is being implemented through modifications of a permit issued under section 402 to the other source, by modifications of the requirements of section 307 applicable to the other source, or by nonpoint source control practices and measures under section 319 applicable to the other source. The Administrator or State may modify otherwise applicable requirements pursuant to this section whenever the Administrator or State determines that such pollution reduction control or measures will result collectively in an overall reduction in discharges to the watershed that is greater than would otherwise be achievable if the parties to the pollution reduction agreement each complied with applicable requirements of subsection (b), section 306 or 307 resulting in a net benefit to the watershed.

''(2) NOTIFICATION TO AFFECTED STATES.—Before issuing or modifying a permit under this subsection allowing discharges into a watershed that is within the jurisdiction of 2 or more States, the Administrator or State shall provide written notice of the proposed permit to all States with jurisdiction over the watershed. The Administrator or State shall not issue or modify such permit unless all States

with jurisdiction over the watershed have approved such permit or unless such States do not disapprove such permit within 90 days of receiving such written notice.

''(3) TERM OF MODIFICATION.—Modifications made pursuant to this subsection shall extend for the term of the modified permits or, in the case of modifications under section 307, for up to 10 years, and may be extended further if the Administrator or State determines, at the expiration of the initial modifications, that such modifications will continue to enable the sources trading credits to achieve greater reduction in discharges to the watershed collectively than would otherwise be attainable.

''(4) NONEXTENSION OF MODIFICATION.—Upon expiration of a modification that is not extended further under paragraph (3), the source shall have a reasonable period of time, not to exceed 2 years, to come into compliance with otherwise applicable requirements of this Act.

''(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the Administrator or a State, as appropriate, to compel trading among sources or to impose nonpoint source control practices without the

consent of the nonpoint source discharger. Nothing in this subsection shall be construed to authorize the Administrator or a State to enforce, place conditions on, or otherwise regulate emissions into the air or the treatment, storage, or disposal of solid waste or require or enforce conditions on the manufacturing or processing of a chemical substance or mixture in any permit issued under this Act.

''(6) LIMITATIONS ON MODIFICATIONS.—A modification of an otherwise applicable limitation or standard may not be made under this subsection if such modification—

''(A) will cause a receiving body of water that is meeting its designated use for all pollutants to no longer meet such use;

''(B) will prevent a receiving body of water that is not meeting its designated use for all pollutants from meeting such use; or

''(C) will cause the introduction of pollutants into a publicly owned treatment works that interferes with, passes through, or is otherwise incompatible with such works or will cause such works to violate its permit under section 402 of this Act.

''(7) GUIDANCE.—Not later than 270 days after the date of the enactment of this subsection, the Administrator shall publish guidance for determining whether a modification of an otherwise applicable limitation or standard under this subsection will achieve an overall reduction in discharges to the watershed and result in an overall net benefit to the environment. In developing such guidance, the Administrator shall consult with the States and other interested parties.

''(8) REPORT.—Not later than 3 years after the date of the enactment of this subsection, the Administrator shall submit a report to Congress on the implementation of paragraph (1) and the discharge reductions achieved as a result of modifications made pursuant to paragraph (1).''.

(d) ANTIBACKSLIDING.—Section 402(o)(2) (33 U.S.C. 1342(o)(2)) is amended—

(1) in subparagraph (D)—

(A) by inserting ''301(q), 301(r),'' after ''301(n),''; and

(B) by striking ''or'' the last place it appears;

(2) in subparagraph (E) by striking the period at the end and inserting ''; or''; and

(3) by inserting after subparagraph (E) the following:

''(F) the permittee is taking pollution prevention or water conservation measures that produce a net environmental benefit, including, but not limited to, measures that result in the substitution of one pollutant for another pollutant; increase the concentration of a pollutant while decreasing the discharge flow; or increase the discharge of a pollutant or pollutants from one or more outfalls at a permittee's facility, when accompanied by offsetting decreases in the discharge of a pollutant or pollutants from other outfalls at the permittee's facility.''.

(e) ANTIDEGRADATION REVIEW.—Section 303(d) (33 U.S.C. 1313(d)) is amended by adding at the end the following:

''(5) ANTIDEGRADATION REVIEW.—The Administrator may not require a State, in implementing the antidegradation policy established under this section, to conduct an antidegradation review in the case of—

''(A) increases in a discharge which are authorized under section 301(g), 301(k), 301(q), 301(r), or 301(t);

''(B) increases in the concentration of a pollutant in a discharge caused by a reduction in wastewater flow;

''(C) increases in the discharge of a pollutant or pollutants from one or more outfalls at a permittee's facility, when accompanied by offsetting decreases in the discharge of a pollutant or pollutants from other outfalls at the permittee's facility;

''(D) reissuance of a permit where there is no increase in existing effluent limitations and, if a new effluent limitation is being added to the permit, where the new limitation is for a pollutant that is newly found in an existing discharge due solely to improved monitoring methods; or

''(E) a new or increased discharge which is temporary or short-term or which the State determines represents an insignificant increased pollutant loading.''.

(f) INNOVATIVE PRETREATMENT PRODUCTION PROCESSES.—Subsection (e) of section 307 (33 U.S.C. 1317(e)) is amended to read as follows:

''(e) INNOVATIVE PRETREATMENT PRODUCTION PROCESSES, TECHNOLOGIES, AND METHODS.—

"(1) IN GENERAL.—In the case of any facility that proposes to comply with the national categorical pretreatment standards developed under subsection (b) by applying an innovative pollution prevention technology (including an innovative production process change, innovative pollution control technology, or innovative recycling method) that meets the requirements of section 301(k), the Administrator or the State, in consultation with the Administrator, in the case of a State which has a pretreatment program approved by the Administrator, upon application of the facility and with the concurrence of the treatment works into which the facility introduces pollutants, may extend the deadlines for compliance with the applicable national categorical pretreatment standards established under this section and make other appropriate modifications to the facility's pretreatment requirements if the Administrator or the State, in consultation with the Administrator, in the case of a State which has a pretreatment program approved by the Administrator determines that—

"(A) the treatment works will require the owner of the source to conduct such tests and monitoring during the period of the modifica-

tion as are necessary to ensure that the modification does not cause or contribute to a violation by the treatment works under section 402 or a violation of section 405;

''(B) the treatment works will require the owner of the source to report on progress at prescribed milestones during the period of modification to ensure that attainment of the pollution reduction goals and conditions set forth in this section is being achieved; and

''(C) the proposed extensions or modifications will not cause or contribute to any violation of a permit granted to the treatment works under section 402, any violation of section 405, or a pass through of pollutants such that water quality standards are exceeded in the body of water into which the treatment works discharges.

''(2) INTERIM LIMITATIONS.—A modification granted pursuant to paragraph (1) shall include interim standards that shall apply during the temporary period of the modification and shall be the more stringent of—

"(A) those necessary to ensure that the discharge will not interfere with the operation of the treatment works;

"(B) those necessary to ensure that the discharge will not pass through pollutants at a level that will cause water quality standards to be exceeded in the navigable waters into which the treatment works discharges;

"(C) the limits established in the previously applicable control mechanism, in those cases in which the limit from which a modification is being sought is more stringent than the limit established in a previous control mechanism applicable to such source.

"(3) DURATION OF EXTENSIONS AND MODIFICATIONS.—The extension of the compliance deadlines and the modified pretreatment requirements established pursuant to paragraph (1) shall not extend beyond the period necessary for the owner to install and use the innovative process, technology, or method in full-scale production operation, but in no case shall the compliance extensions and modified requirements extend beyond 3 years from the date for compliance with the otherwise applicable standards.

"(4) CONSEQUENCES OF FAILURE.—In determining the amount of any civil or administrative penalty pursuant to section 309(d) or 309(g) for any pretreatment violations, or violations by a publicly owned treatment works, caused by the unexpected failure of an innovative process, technology, or method, a court or the Administrator, as appropriate, shall reduce, or eliminate, the penalty amount for such violations provided the facility made good-faith efforts both to implement the innovation and to comply with the interim standards and, in the case of a publicly owned treatment works, good-faith efforts were made to implement the pretreatment program.".

SEC. 303. WATER QUALITY STANDARDS AND IMPLEMENTATION PLANS.

(a) NO REASONABLE RELATIONSHIP.—Section 303(b) (33 U.S.C. 1313(b)) is amended by adding at the end the following:

"(3) NO REASONABLE RELATIONSHIP.—No water quality standard shall be established under this subsection where there is no reasonable relationship between the costs and anticipated benefits of attaining such standard.".

(b) REVISION OF STATE STANDARDS.—

(1) REVIEW OF REVISIONS BY THE ADMINISTRATOR.—Section 303(c)(1) is amended by striking ''three'' and all that follows through ''1972'' and inserting the following: ''5-year period beginning on the date of the enactment of the Clean Water Amendments of 1995 and, for criteria that are revised by the Administrator pursuant to section 304(a), on or before the 180th day after the date of such revision by the Administrator''.

(2) FACTORS.—Section 303(c) (33 U.S.C. 1313(c)) is amended by striking paragraph (2)(A) and inserting the following:

''(2) STATE ADOPTION OF WATER QUALITY STANDARDS.—

''(A) IN GENERAL.—

''(i) SUBMISSION TO ADMINISTRATOR.—Whenever the State revises or adopts a new water quality standard, such standard shall be submitted to the Administrator.

''(ii) DESIGNATED USES AND WATER QUALITY CRITERIA.—The revised or new standard shall consist of the designated uses of the navigable waters involved and

the water quality criteria for such waters based upon such uses.

''(iii) PROTECTION OF HUMAN HEALTH.—The revised or new standard shall protect human health and the environment and enhance water quality.

''(iv) DEVELOPMENT OF STANDARDS.—In developing revised or new standards, the State may consider information reasonably available on the likely social, economic, energy use, and environmental cost associated with attaining such standards in relation to the benefits to be attained. The State may provide a description of the considerations used in the establishment of the standards.

''(v) RECORD OF STATE'S REVIEW.—The record of a State's review under paragraph (1) of an existing standard or adoption of a new standard that includes water quality criteria issued or revised by the Administrator after the date of the enactment of this sentence shall contain available estimates of costs of compliance with the water quality criteria published by the Ad-

ministrator under section 304(a)(12) and any comments received by the State on such estimate.

''(vi) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to limit or delay the use of any guidance of the Administrator interpreting water quality criteria to allow the use of a dissolved metals concentration measurement or similar adjustment in determining compliance with a water quality standard or establishing effluent limitations.''.

(c) REVISION OF DESIGNATED USES.—Section 303(c)(2) (33 U.S.C. 1313(c)(2)) is amended by adding at the end the following:

''(C) REVISION OF DESIGNATED USES.—

''(i) REGULATIONS.—After consultation with State officials and not later than 1 year after the date of the enactment of this subparagraph, the Administrator shall propose, and not later than 2 years after such date of enactment shall issue, a revision to the Administrator's regulations re-

garding designation of uses of waters by States.

''(ii) WATERS NOT ATTAINING DESIGNATED USES.—For navigable waters not attaining designated uses applicable to such waters for all pollutants, the Administrator shall identify conditions that make attainment of the designated use infeasible and shall allow a State to modify the designated use if the State determines that such condition or conditions are present with respect to a particular receiving water, or if the State determines that the costs of achieving the designated use are not justified by the benefits.

''(iii) MODIFICATION OF POINT SOURCE LIMITS.—Notwithstanding any other provision of this Act, water quality based limits applicable to point sources may be modified as appropriate to conform to any modified designated use under this section.''.

(d) CONSIDERATION OF INFLUENCE OF EXOTIC SPECIES.—Section 303(c)(2) is further amended by adding at the end the following:

"(D) CONSIDERATION OF INFLUENCE OF EXOTIC SPECIES.—In establishing, adopting, or reviewing standards or goals based upon fishable or swimmable uses or uses to assure protection or propagation of a balanced population of fish, shellfish, and wildlife, the State or the Administrator shall consider the influence of exotic or introduced species upon such standards, goals, or uses.

"(E) RECLAIMED WASTEWATER.—If a State adopts or reviews water quality standards and policies pursuant to this section, the State may consider and balance, in addition to other factors referred to in this section, the need for allowing the discharge of reclaimed wastewater to navigable waters to promote the beneficial use of reclaimed wastewater. In addition, the State may take into consideration and reflect in the standards—

"(i) the use and value of reclaimed wastewater for public water supplies;

"(ii) the physical, chemical, and biological conditions that influence water quality in the area subject to the standards, including extremes of temperature,

water flow, turbidity, mineralization, salinity, and flooding; and

''(iii) whether the discharge of reclaimed wastewater will result in a net environmental benefit to the watershed subject to the standards.''.

(e) CLARIFICATION OF MIXING ZONE AUTHORITY.—Section 303 (33 U.S.C. 1313) is amended by adding at the end the following:

''(i) CONTINUATION OF MIXING ZONES.—Nothing in this Act shall be construed to authorize the Administrator to prohibit or discontinue mixing zones established by any State for any pollutant or class of pollutants.''.

SEC. 304. USE OF BIOLOGICAL MONITORING.

(a) LABORATORY BIOLOGICAL MONITORING CRITERIA.—Subparagraph (B) of section 303(c)(2) (33 U.S.C. 1313(c)(2)) is amended—

(1) by inserting ''CRITERIA FOR TOXIC POLLUTANTS.—'' after ''(B)'';

(2) by moving such subparagraph 4 ems to the right;

(3) by inserting after the third sentence the following: ''Criteria for whole effluent toxicity based on laboratory biological monitoring or assessment methods shall employ an aquatic species that is indige-

nous to the type of waters, a species that is representative of such a species, or an appropriate species that indicates the toxicity of the effluent in the receiving waters and shall take into account the accepted analytical variability associated with such methods in defining an exceedence of such criteria.''.

(b) PERMIT PROCEDURES.—Section 402 is amended by adding at the end the following:

''(q) BIOLOGICAL MONITORING PROCEDURES.—

''(1) RESPONDING TO EXCEEDANCES.—If a permit issued under this section contains terms, conditions, or limitations requiring biological monitoring or whole effluent toxicity testing designed to meet criteria for whole effluent toxicity based on laboratory biological monitoring or assessment methods described in section 303(c)(2)(B), the permit shall establish procedures for responding to an exceedance of such criteria that includes analysis, identification, reduction, or, where feasible, elimination of any effluent toxicity. The failure of a biological monitoring test or whole effluent toxicity test shall not result in a finding of a violation under this Act, unless it is demonstrated that the permittee has failed to comply with such procedures.

"(2) DISCONTINUANCE OF USE.—The permit shall allow the permittee to discontinue such procedures—

"(A) if the permittee is an entity, other than a publicly owned treatment works, if the permittee demonstrates to the permitting authority through a field bio-assessment study that a balanced and healthy population of aquatic species indigenous to the type of waters exists in the waters that are affected by the discharge, and if the applicable numerical water quality standards for specific pollutants are met for such waters; or

"(B) if the permittee is a publicly owned treatment works—

"(i) if the source or cause of such toxicity cannot, after thorough investigation, be identified; or

"(ii) if the permittee makes to the permitting authority a demonstration described in subparagraph (A).".

(c) INFORMATION ON WATER QUALITY CRITERIA.—Section 304(a)(8) (33 U.S.C. 1314(a)(8)) is amended—

(1) by striking ", after" and all that follows through "1987,"; and

(2) by inserting after ''publish'' the following: '', consistent with section 303(c)(2)(B) of this Act,''.

SEC. 305. ARID AREAS.

(a) CONSTRUCTED WATER CONVEYANCES.—Section 303(c)(2) (33 U.S.C. 1313(c)(2)) is amended by adding at the end the following:

''(F) STANDARDS FOR CONSTRUCTED WATER CONVEYANCES.—

''(i) RELEVANT FACTORS.—If a State exercises jurisdiction over constructed water conveyances in establishing standards under this section, the State may consider the following:

''(I) The existing and planned uses of water transported in a conveyance system.

''(II) Any water quality impacts resulting from any return flow from a constructed water conveyance to navigable waters and the need to protect downstream users.

''(III) Management practices necessary to maintain the conveyance system.

''(IV) State or regional water resources management and water conservation plans.

''(V) The authorized purpose for the constructed conveyance.

''(ii) RELEVANT USES.—If a State adopts or reviews water quality standards for constructed water conveyances, it shall not be required to establish recreation, aquatic life, or fish consumption uses for such systems if the uses are not existing or reasonably foreseeable or such uses impede the authorized uses of the conveyance system.''.

(b) CRITERIA AND GUIDANCE FOR EPHEMERAL AND EFFLUENT-DEPENDENT STREAMS.—Section 304(a) (33 U.S.C. 1314(a)) is amended by adding at the end the following:

''(9) CRITERIA AND GUIDANCE FOR EPHEMERAL AND EFFLUENT-DEPENDENT STREAMS.—

''(A) DEVELOPMENT.—Not later than 2 years after the date of the enactment of this paragraph, and after providing notice and opportunity for public comment, the Administrator shall develop and publish—

"(i) criteria for ephemeral and effluent-dependent streams; and

"(ii) guidance to the States on development and adoption of water quality standards applicable to such streams.

"(B) FACTORS.—The criteria and guidance developed under subparagraph (A) shall take into account the limited ability of ephemeral and effluent-dependent streams to support aquatic life and certain designated uses, shall include consideration of the role the discharge may play in maintaining the flow or level of such waters, and shall promote the beneficial use of reclaimed water pursuant to section 101(a)(10).".

(c) FACTORS REQUIRED TO BE CONSIDERED BY ADMINISTRATOR.—Section 303(c)(4) is amended by adding at the end the following: "In revising or adopting any new standard for ephemeral or effluent-dependent streams under this paragraph, the Administrator shall consider the factors referred to in section 304(a)(9)(B).".

(d) DEFINITIONS.—Section 502 (33 U.S.C. 1362) is amended by adding at the end the following:

"(21) The term 'effluent-dependent stream' means a stream or a segment thereof—

''(A) with respect to which the flow (based on the annual average expected flow, determined by calculating the average mode over a 10-year period) is primarily attributable to the discharge of treated wastewater;

''(B) that, in the absence of a discharge of treated wastewater and other primary anthropogenic surface or subsurface flows, would be an ephemeral stream; or

''(C) that is an effluent-dependent stream under applicable State water quality standards.

''(22) The term 'ephemeral stream' means a stream or segments thereof that flows periodically in response to precipitation, snowmelt, or runoff.

''(23) The term 'constructed water conveyance' means a manmade water transport system constructed for the purpose of transporting water in a waterway that is not and never was a natural perennial waterway.''.

SEC. 306. TOTAL MAXIMUM DAILY LOADS.

Section 303(d)(1)(C) (33 U.S.C. 1313(d)(1)(C)) is amended to read as follows:

''(C) TOTAL MAXIMUM DAILY LOADS.—

''(i) STATE DETERMINATION OF REASONABLE PROGRESS.—Each State shall establish, to the extent and according to a

schedule the State determines is necessary to achieve reasonable progress toward the attainment or maintenance of water quality standards, for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 304(a)(2) as suitable for such calculation.

''(ii) PHASED TOTAL MAXIMUM DAILY LOADS.—Total maximum daily loads may reflect load reductions the State expects will be realized over time resulting from anticipated implementation of best management practices, storm water controls, or other nonpoint or point source controls; so long as by December 31, 2015, such loads are established at levels necessary to implement the applicable water quality standards with seasonal variations and a margin of safety.

''(iii) CONSIDERATIONS.—In establishing each load, the State shall consider the availability of scientifically valid data and

information, the projected reductions achievable by control measures or practices for all sources or categories of sources, and the relative cost-effectiveness of implementing such control measures or practices for such sources.''.

SEC. 307. REVISION OF CRITERIA, STANDARDS, AND LIMITATIONS.

(a) REVISION OF WATER QUALITY CRITERIA.—

(1) FACTORS.—Section 304(a)(1) (33 U.S.C. 1314(a)(1)) is amended—

(A) by striking ''and (C)'' and inserting ''(C)''; and

(B) by striking the period at the end and inserting the following: ''(D) on the organisms that are likely to be present in various ecosystems; (E) on the bioavailability of pollutants under various natural and man induced conditions; (F) on the magnitude, duration, and frequency of exposure reasonably required to induce the adverse effects of concern; and (G) on the bioaccumulation threat presented under various natural conditions.''.

(2) CERTIFICATION.—Section 304(a) (33 U.S.C. 1314(a)) is amended by adding at the end the following:

''(10) CERTIFICATION.—

''(A) IN GENERAL.—Not later than 5 years after the date of the enactment of this paragraph, and at least once every 5 years thereafter, the Administrator shall publish a written certification that the criteria for water quality developed under paragraph (1) reflect the latest and best scientific knowledge.

''(B) UPDATING OF EXISTING CRITERIA.—Not later than 90 days after the date of the enactment of this paragraph, the Administrator shall publish a schedule for updating, by not later than 5 years after the date of the enactment of this paragraph, the criteria for water quality developed under paragraph (1) before the date of the enactment of this subsection.

''(C) DEADLINE FOR REVISION OF CERTAIN CRITERIA.—Not later than 1 year after the date of the enactment of this paragraph, the Administrator shall revise and publish criteria under paragraph (1) for ammonia, chronic whole effluent toxicity, and metals as necessary

to allow the Administrator to make the certification under subparagraph (A). In the case of ammonia, the Administrator shall revise the criteria only to the extent that the current criteria are more stringent than necessary to achieve the objectives of this Act. ''.

(b) CONSIDERATION OF CERTAIN CONTAMINANTS.—Section 304(a) (33 U.S.C. 1314(a)) is amended by adding at the end the following:

''(11) CONSIDERATION OF CERTAIN CONTAMINANTS.—In developing and revising criteria for water quality criteria under paragraph (1), the Administrator shall consider addressing, at a minimum, each contaminant regulated pursuant to section 1412 of the Public Health Service Act (42 U.S.C. 300g–1).''.

(c) COST ESTIMATE.—Section 304(a) (33 U.S.C. 1314(a)) is further amended by adding at the end the following:

''(12) COST ESTIMATE.—Whenever the Administrator issues or revises a criteria for water quality under paragraph (1), the Administrator, after consultation with Federal and State agencies and other interested persons, shall develop and publish an estimate of the costs that would likely be incurred if

sources were required to comply with the criteria and an analysis to support the estimate. Such analysis shall meet the requirements relevant to the estimation of costs published in guidance issued under section 324(b).''.

(d) REVISION OF EFFLUENT LIMITATIONS.—

(1) ELIMINATION OF REQUIREMENT FOR ANNUAL REVISION.—Section 304(b) (33 U.S.C. 1314(b)) is amended in the matter preceding paragraph (1) by striking ''and, at least annually thereafter,'' and inserting ''and thereafter shall''.

(2) SPECIAL RULE.—Section 304(b) (33 U.S.C. 1314(b)) is amended by striking the period at the end of the first sentence and inserting the following: ''; except that guidelines issued under paragraph (1)(A) addressing pollutants identified pursuant to subsection (a)(4) shall not be revised after February 15, 1995, to be more stringent unless such revised guidelines meet the requirements of paragraph (4)(A).''.

(e) INDUSTRIAL PUBLICLY OWNED TREATMENT WORKS.—Section 304(d) (33 U.S.C. 1314(d)) is amended by adding at the end the following:

''(5) INDUSTRIAL PUBLICLY OWNED TREATMENT WORKS.—

"(A) GUIDELINES.—Not later than 18 months after the date of the enactment of this paragraph, the Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish guidelines for effluent limitations under section 301 and sludge use and disposal requirements under section 405 applicable to publicly owned treatment works designed to treat a predominance of industrial wastewater. Such guidelines shall take into account differences in constituents, treatability, available technology procedures, and costs resulting from the fact that the publicly owned treatment works treat wastewater and manage sludge derived predominantly from industrial sources.

"(B) PERMITS.—Following the issuance of guidelines under this paragraph, permits under section 402 for such publicly owned treatment works shall be derived using the guidelines issued under this paragraph in lieu of applying the regulations otherwise applicable to publicly owned treatment works promulgated under paragraph (1) of this subsection and section 405(d).".

(f) SCHEDULE FOR REVIEW OF GUIDELINES.—Section 304(m)(1) (33 U.S.C. 1314(m)(1)) is amended to read as follows:

''(1) PUBLICATION.—Not later than 1 year after the date of the enactment of the Clean Water Amendments of 1995, the Administrator shall publish in the Federal Register a plan which shall—

''(A) identify categories of sources discharging pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not been previously published;

''(B) establish a schedule for determining whether such discharge presents a significant risk to human health and the environment and whether such risk is sufficient, when compared to other sources of pollutants in navigable waters, to warrant regulation by the Administrator; and

''(C) establish a schedule for issuance of effluent guidelines for those categories identified pursuant to subparagraph (B).''.

(g) REVISION OF PRETREATMENT REQUIREMENTS.—Section 304(g)(1) (33 U.S.C. 1314(g)(1)) is amended by striking ''and review at least annually there-

after and, if appropriate, revise'' and insert ''and thereafter revise, as appropriate,''.

(h) CENTRAL TREATMENT FACILITY EXEMPTION.—Section 304 (33 U.S.C. 1314) is amended by adding at the end the following:

''(n) CENTRAL TREATMENT FACILITY EXEMPTION.—The exemption from effluent guidelines for the Iron and Steel Manufacturing Point Source Category set forth in section 420.01(b) of title 40, Code of Federal Regulations, for the facilities listed in such section shall remain in effect for any facility that met the requirements of such section on or before July 26, 1982, until the Administrator develops alternative effluent guidelines for the facility.''.

SEC. 308. PERSONNEL AND REPORTING.

''(a) Permitting Boards.—Section 304(i)(2)(D) (33 U.S.C. 1314(i)(2)(D)) is amended by striking ''any person'' and all that follows through the period at the end and inserting the following: ''any person (other than a retiree or an employee or official of a city, county, or local governmental agency) who receives a significant portion of his or her income during the period of service on the board or body directly or indirectly from permit holders or applicants for a permit).''.

(b) REPORTING.—Section 305(b) (33 U.S.C. 1315(b)) is amended—

(1) in paragraph (1) by striking the matter preceding subparagraph (A) and inserting ''Not later than 3 years after the date of the enactment of the Clean Water Amendments of 1995, and every 5 years thereafter, each State shall prepare and submit to the Administrator a report which shall include—''; and

(2) by adding at the end the following:

''(c) CONSOLIDATION OF REPORTING REQUIREMENTS.—A State may consolidate any of the reporting requirements of this Act that relate to ambient water quality into the report required under this section.''.

SEC. 309. SECONDARY TREATMENT.

(a) COASTAL DISCHARGES.—Section 304(d) (33 U.S.C. 1314(d)) is amended by adding at the end the following:

''(6) COASTAL DISCHARGES.—For purposes of this subsection, any municipal wastewater treatment facility shall be deemed the equivalent of a secondary treatment facility if each of the following requirements is met:

''(A) The facility employs chemically enhanced primary treatment.

''(B) The facility, on the date of the enactment of this paragraph, discharges through an ocean outfall into an open marine environment greater than 4 miles offshore into a depth greater than 300 feet.

''(C) The facility's discharge is in compliance with all local and State water quality standards for the receiving waters.

''(D) The facility's discharge will be subject to an ocean monitoring program acceptable to relevant Federal and State regulatory agencies.''.

(b) MODIFICATION OF SECONDARY TREATMENT REQUIREMENTS.—

(1) IN GENERAL.—Section 301 (33 U.S.C. 1311) is amended by adding at the end the following:

''(s) MODIFICATION OF SECONDARY TREATMENT REQUIREMENTS.—

''(1) IN GENERAL.—The Administrator, with the concurrence of the State, shall issue a 10-year permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters

which are at least 150 feet deep through an ocean outfall which discharges at least 1 mile offshore, if the applicant demonstrates that—

''(A) there is an applicable ocean plan and the facility's discharge is in compliance with all local and State water quality standards for the receiving waters;

''(B) the facility's discharge will be subject to an ocean monitoring program determined to be acceptable by relevant Federal and State regulatory agencies;

''(C) the applicant has an Agency approved pretreatment plan in place; and

''(D) the applicant, at the time such modification becomes effective, will be discharging effluent which has received at least chemically enhanced primary treatment and achieves a monthly average of 75 percent removal of suspended solids.

''(2) DISCHARGE OF ANY POLLUTANT INTO MARINE WATERS DEFINED.—For purposes of this subsection, the term 'discharge of any pollutant into marine waters' means a discharge into deep waters of the territorial sea or the waters of the contiguous

zone, or into saline estuarine waters where there is strong tidal movement.

''(3) DEADLINE.—On or before the 90th day after the date of submittal of an application for a modification under paragraph (1), the Administrator shall issue to the applicant a modified permit under section 402 or a written determination that the application does not meet the terms and conditions of this subsection.

''(4) EFFECT OF FAILURE TO RESPOND.—If the Administrator does not respond to an application for a modification under paragraph (1) on or before the 90th day referred to in paragraph (3), the application shall be deemed approved and the modification sought by the applicant shall be in effect for the succeeding 10-year period.''.

(2) EXTENSION OF APPLICATION DEADLINE.—Section 301(j) (33 U.S.C. 1311(j)) is amended by adding at the end the following:

''(6) EXTENSION OF APPLICATION DEADLINE.—In the 365-day period beginning on the date of the enactment of this paragraph, municipalities may apply for a modification pursuant to subsection (s) of the requirements of subsection (b)(1)(B) of this section.''.

(c) MODIFICATIONS FOR SMALL SYSTEM TREATMENT TECHNOLOGIES.—Section 301 (33 U.S.C. 1311) is amended by adding at the end the following:

''(t) MODIFICATIONS FOR SMALL SYSTEM TREATMENT TECHNOLOGIES.—The Administrator, with the concurrence of the State, or a State with an approved program under section 402 may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works serving a community of 10,000 people or fewer if the applicant demonstrates to the satisfaction of the Administrator that—

''(1) the effluent from such facility originates primarily from domestic users; and

''(2) such facility utilizes a properly constructed and operated alternative wastewater treatment system (including recirculating sand filter systems, constructed wetlands, and oxidation lagoons) which is equivalent to secondary treatment or will provide in the receiving waters and watershed an adequate level of protection to human health and the environment and contribute to the attainment of water quality standards.''.

(d) PUERTO RICO.—Section 301 (33 U.S.C. 1311) is further amended by adding at the end the following:

''(u) PUERTO RICO.—

''(1) STUDY BY GOVERNMENT OF PUERTO RICO.—Not later than 3 months after the date of the enactment of this section, the Government of Puerto Rico may, after consultation with the Administrator, initiate a study of the marine environment of Anasco Bay off the coast of the Mayaguez region of Puerto Rico to determine the feasibility of constructing a deepwater outfall for the publicly owned treatment works located at Mayaguez, Puerto Rico. Such study shall recommend one or more technically feasible locations for the deepwater outfall based on the effects of such outfall on the marine environment.

''(2) APPLICATION FOR MODIFICATION.—Notwithstanding subsection (j)(1)(A), not later than 18 months after the date of the enactment of this section, an application may be submitted for a modification pursuant to subsection (h) of the requirements of subsection (b)(1)(B) of this section by the owner of the publicly owned treatment works at Mayaguez, Puerto Rico, for a deepwater outfall at a lo-

cation recommended in the study conducted pursuant to paragraph (1).

''(3) INITIAL DETERMINATION.—On or before the 90th day after the date of submittal of an application for modification under paragraph (2), the Administrator shall issue to the applicant a draft initial determination regarding the modification of the existing permit.

''(4) FINAL DETERMINATION.—On or before the 270th day after the date of submittal of an application for modification under paragraph (2), the Administrator shall issue a final determination regarding such modification.

''(5) EFFECTIVENESS.—If a modification is granted pursuant to an application submitted under this subsection, such modification shall be effective only if the new deepwater outfall is operational within 5 years after the date of the enactment of this subsection. In all other aspects, such modification shall be effective for the period applicable to all modifications granted under subsection (h).

(e) ANCHORAGE, ALASKA.—Section 301 (33 U.S.C. 1311) is further amended by adding at the end the following:

''(v) ANCHORAGE, ALASKA.—The Administrator may grant an application for a modification pursuant to subsection (h) with respect to the discharge into marine waters of any pollutant from a publicly owned treatment works serving Anchorage, Alaska, notwithstanding subsection (j)(1)(A) and notwithstanding whether or not the treatment provided by such treatment works is adequate to remove at least 30 percent of the biological oxygen demanding material.''.

SEC. 310. TOXIC POLLUTANTS.

(a) TOXIC EFFLUENT LIMITATIONS AND STANDARDS.—Section 307(a)(2) (33 U.S.C. 1317(a)(2)) is amended—

(1) by striking ''(2) Each'' and inserting the following:

''(2) TOXIC EFFLUENT LIMITATIONS AND STANDARDS.—

''(A) IN GENERAL.—Each'';

(2) by moving paragraph (2) 2 ems to the right;

(3) by indenting subparagraph (A), as so designated, and moving the remaining text of such subparagraph 2 ems further to the right; and

(4) in subparagraph (A), as so designated, by striking the third sentence; and

(5) by adding at the end the following:

''(B) FACTORS.—The published effluent standard (or prohibition) shall take into account—

''(i) the pollutant's persistence, toxicity, degradability, and bioaccumulation potential;

''(ii) the magnitude and risk of exposure to the pollutant, including risks to affected organisms and the importance of such organisms;

''(iii) the relative contribution of point source discharges of the pollutant to the overall risk from the pollutant;

''(iv) the availability of, costs associated with, and risk posed by substitute chemicals or processes or the availability of treatment processes or control technology;

''(v) the beneficial and adverse social and economic effects of the effluent standard, including the impact on energy resources;

''(vi) the extent to which effective control is being or may be achieved in an ex-

peditious manner under other regulatory authorities;

''(vii) the impact on national security interests; and

''(viii) such other factors as the Administrator considers appropriate.''.

(b) BEACH WATER QUALITY MONITORING.—

(1) IN GENERAL.—Section 304 is further amended by adding at the end the following:

''(o) BEACH WATER QUALITY MONITORING.—After consultation with appropriate Federal, State, and local agencies and after providing notice and opportunity for public comment, the Administrator shall develop and issue, not later than 18 months after the date of the enactment of this Act, guidance that States may use in monitoring water quality at beaches and issuing health advisories with respect to beaches, including testing protocols, recommendations on frequency of testing and monitoring, recommendations on pollutants for which monitoring and testing should be conducted, and recommendations on when health advisories should be issued. Such guidance shall be based on the best available scientific information and be sufficient to protect public health and safety in the case of any reasonably expected exposure to pollutants as a result of swimming or bathing.''.

(2) REPORTS.—Section 516(a) (33 U.S.C. 1375(a)) is amended by striking ''and (9)'' and inserting ''(9) the monitoring conducted by States on the water quality of beaches and the issuance of health advisories with respect to beaches, and (10)''.

(c) FISH CONSUMPTION ADVISORIES.—Any fish consumption advisories issued by the Administrator shall be based upon the protocols, methodology, and findings of the Food and Drug Administration.

SEC. 311. LOCAL PRETREATMENT AUTHORITY.

Section 307 (33 U.S.C. 1317) is amended by adding at the end the following new subsection:

''(f) LOCAL PRETREATMENT AUTHORITY.—

''(1) DEMONSTRATION.—If, to carry out the purposes identified in paragraph (2), a publicly owned treatment works with an approved pretreatment program demonstrates to the satisfaction of the Administrator, or a State with an approved program under section 402, that—

''(A) such publicly owned treatment works is in compliance, and is likely to remain in compliance, with its permit under section 402, including applicable effluent limitations and narrative standards;

''(B) such publicly owned treatment works is in compliance, and is likely to remain in compliance, with applicable air emission limitations;

''(C) biosolids produced by such publicly owned treatment works meet beneficial use requirements under section 405;

''(D) such publicly owned treatment works is likely to continue to meet all applicable State requirements; and

''(E) local limits established by such treatment works in its approved pretreatment program are preventing and will continue to prevent the introduction of pollutants into such treatment works that interfere with, pass through, or are otherwise incompatible with such treatment works;

the approved pretreatment program shall be modified to allow the publicly owned treatment works to apply approved local limits in lieu of categorical pretreatment standards promulgated under this section.

''(2) PURPOSES.—The publicly owned treatment works may make the demonstration to the Administrator or the State, as the case may be, to apply approved local limits in lieu of categorical

pretreatment standards, as the treatment works deems necessary, for the purposes of—

''(A) reducing the administrative burden associated with the designation of an 'industrial user' as a 'categorical industrial user'; or

''(B) eliminating additional redundant or unnecessary treatment by industrial users which has little or no environmental benefit.

''(3) LIMITATIONS.—

''(A) SIGNIFICANT NONCOMPLIANCE.—The publicly owned treatment works may not apply local limits in lieu of categorical pretreatment standards to any industrial user which is in significant noncompliance (as defined by the Administrator) with its approved pretreatment program.

''(B) PROCEDURES.—A demonstration to the Administrator or the State under paragraph (1) must be made under the procedures for pretreatment program modification provided under this section and section 402.

''(4) ANNUAL REVIEW.—

''(A) DEMONSTRATION RELATING TO ABILITY TO MEET CRITERIA.—As part of the annual pretreatment report of the publicly owned treat-

ment works to the Administrator or State, the treatment works shall demonstrate that application of local limits in lieu of categorical pretreatment standards has not resulted in the inability of the treatment works to meet the criteria of paragraph (1).

''(B) TERMINATION OF AUTHORITY.—If the Administrator or State determines that application of local limits in lieu of categorical pretreatment standards has resulted in the inability of the treatment works to meet the criteria of paragraph (1), the authority of a publicly owned treatment works under this section shall be terminated and any affected industrial user shall have a reasonable period of time to be determined by the Administrator or State, but not to exceed 2 years, to come into compliance with any otherwise applicable requirements of this Act.''.

SEC. 312. COMPLIANCE WITH MANAGEMENT PRACTICES.

Section 307 (33 U.S.C. 1317) is amended by adding at the end the following:

''(g) COMPLIANCE WITH MANAGEMENT PRACTICES.—

"(1) SPECIAL RULE.—The Administrator or a State with a permit program approved under section 402 may allow any person that introduces silver into a publicly owned treatment works to comply with a code of management practices with respect to the introduction of silver into the treatment works for a period not to exceed 5 years beginning on the date of the enactment of this subsection in lieu of complying with any pretreatment requirement (including any local limit) based on an effluent limitation for the treatment works derived from a water quality standard for silver—

"(A) if the treatment works has accepted the code of management practices;

"(B) if the code of management practices meets the requirements of paragraph (2); and

"(C) if the facility is—

"(i) part of a class of facilities for which the code of management practices has been approved by the Administrator or the State;

"(ii) in compliance with a mass limitation or concentration level for silver attainable with the application of the best available technology economically achievable for

such facilities, as established by the Administrator after a review of the treatment and management practices of such class of facilities; and

''(iii) implementing the code of management practices.

''(2) CODE OF MANAGEMENT PRACTICES.—A code of management practices meets the requirements of this paragraph if the code of management practices—

''(A) is developed and adopted by representatives of industry and publicly owned treatment works of major urban areas;

''(B) is approved by the Administrator or the State, as the case may be;

''(C) reflects acceptable industry practices to minimize the amount of silver introduced into publicly owned treatment works or otherwise entering the environment from the class of facilities for which the code of management practices is approved; and

''(D) addresses, at a minimum—

''(i) the use of the best available technology economically achievable, based on a review of the current state of such tech-

nology for such class of facilities and of the effluent guidelines for such facilities;

''(ii) water conservation measures available to reduce the total quantity of discharge from such facilities to publicly owned treatment works;

''(iii) opportunities to recover silver (and other pollutants) from the waste stream prior to introduction into a publicly owned treatment works; and

''(iv) operating and maintenance practices to minimize the amount of silver introduced into publicly owned treatment works and to assure consistent performance of the management practices and treatment technology specified under this paragraph.

''(3) INTERIM EXTENSION FOR POTWS RECEIVING SILVER.—In any case in which the Administrator or a State with a permit program approved under section 402 allows under paragraph (1) a person to comply with a code of management practices for a period of not to exceed 5 years in lieu of complying with a pretreatment requirement (including a local limit) for silver, the Administrator or State, as

applicable, shall modify the permit conditions and effluent limitations for any affected publicly owned treatment works to defer for such period compliance with any effluent limitation derived from a water quality standard for silver beyond that required by section 301(b)(2), notwithstanding the provisions of section 303(d)(4) and 402(o), if the Administrator or the State, as applicable, finds that—

''(A) the quality of any affected waters and the operation of the treatment works will be adequately protected during such period by implementation of the code of management practices and the use of best technology economically achievable by persons introducing silver into the treatment works;

''(B) the introduction of pollutants into such treatment works is in compliance with paragraphs (1) and (2); and

''(C) a program of enforcement by such treatment works and the State ensures such compliance.''.

SEC. 313. FEDERAL ENFORCEMENT.

(a) ADJUSTMENT OF PENALTIES.—Section 309 (33 U.S.C. 1319) is amended by adding at the end the following:

"(h) ADJUSTMENT OF MONETARY PENALTIES FOR INFLATION.—

"(1) IN GENERAL.—Not later than 4 years after the date of the enactment of this subsection, and at least once every 4 years thereafter, the Administrator shall adjust each monetary penalty provided by this section in accordance with paragraph (2) and publish such adjustment in the Federal Register.

"(2) METHOD.—An adjustment to be made pursuant to paragraph (1) shall be determined by increasing or decreasing the maximum monetary penalty or the range of maximum monetary penalties, as appropriate, by multiplying the cost-of-living adjustment and the amount of such penalty.

"(3) COST-OF-LIVING ADJUSTMENT DEFINED.—In this subsection, the term 'cost-of-living' adjustment means the percentage (if any) for each monetary penalty by which—

"(A) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; is greater or less than

"(B) the Consumer Price Index for—

"(i) with respect to the first adjustment under this subsection, the month of

June of the calendar year preceding the date of the enactment of this subsection; and

''(ii) with respect to each subsequent adjustment under this subsection, the month of June of the calendar year in which the amount of such monetary penalty was last adjusted under this subsection.

''(4) ROUNDING.—In making adjustments under this subsection, the Administrator may round the dollar amount of a penalty, as appropriate.

''(5) APPLICABILITY.—Any increase or decrease to a monetary penalty resulting from this subsection shall apply only to violations which occur after the date any such increase takes effect.''.

(b) JOINING STATES AS PARTIES IN ACTIONS INVOLVING MUNICIPALITIES.—Section 309(e) (33 U.S.C. 1319(e)) is amended by striking ''shall be joined as a party. Such State'' and inserting ''may be joined as a party. Any State so joined as a party''.

SEC. 314. RESPONSE PLANS FOR DISCHARGES OF OIL OR HAZARDOUS SUBSTANCES.

(a) IN GENERAL.—The requirements of section 311(j)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(5)) shall not apply with respect to—

(1) a municipal or industrial treatment works at which no greater than a de minimis quantity of oil or hazardous substances is stored; or

(2) a facility that stores process water mixed with a de minimis quantity of oil.

(b) REGULATIONS.—The President shall issue regulations clarifying the meaning of the term ''de minimis quantity of oil or hazardous substances'' as used in this section.

SEC. 315. MARINE SANITATION DEVICES.

Section 312(c)(1)(A) (33 U.S.C. 1322(c)(1)(A)) is amended by adding at the end the following: ''Not later than 2 years after the date of the enactment of this sentence, and at least once every 5 years thereafter, the Administrator, in consultation with the Secretary of the Department in which the Coast Guard is operating and after providing notice and opportunity for public comment, shall review such standards and regulations to take into account improvements in technology relating to marine sanitation devices and based on such review shall make such revisions to such standards and regulations as may be necessary.''.

SEC. 316. FEDERAL FACILITIES.

(a) APPLICATION OF CERTAIN PROVISIONS.—Section 313(a) (33 U.S.C. 1323(a)) is amended by striking all preceding subsection (b) and inserting the following:

"SEC. 313. FEDERAL FACILITIES POLLUTION CONTROL.

''(a) APPLICABILITY OF FEDERAL, STATE, INTERSTATE, AND LOCAL LAWS.—

''(1) IN GENERAL.—Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government—

''(A) having jurisdiction over any property or facility, or

''(B) engaged in any activity resulting, or which may result, in the discharge of pollutants,

and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner and to the same extent as any nongovernmental entity, including the payment of reasonable service charges.

''(2) TYPES OF ACTIONS COVERED.—Paragraph (1) shall apply—

"(A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits, and any other requirement),

"(B) to the exercise of any Federal, State, or local administrative authority, and

"(C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner.

"(3) PENALTIES AND FINES.—The Federal, State, interstate, and local substantive and procedural requirements, administrative authority, and process and sanctions referred to in paragraph (1) include all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations.

"(4) SOVEREIGN IMMUNITY.—

"(A) WAIVER.—The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any requirement, administrative authority, and process and sanctions referred to in paragraph

(1) (including any injunctive relief, any administrative order, any civil or administrative penalty or fine referred to in paragraph (3), or any reasonable service charge).

''(B) PROCESSING FEES.—The reasonable service charges referred to in this paragraph include fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local water pollution regulatory program.

''(5) EXEMPTIONS.—

''(A) GENERAL AUTHORITY OF PRESIDENT.—The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any requirement to which paragraph (1) applies if the President determines it to be in the paramount interest of the United States to do so; except that no exemption may be

granted from the requirements of section 306 or 307 of this Act.

''(B) LIMITATION.—No exemptions shall be granted under subparagraph (A) due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

''(C) TIME PERIOD.—Any exemption under subparagraph (A) shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods of not to exceed 1 year upon the President's making a new determination.

''(D) MILITARY PROPERTY.—In addition to any exemption of a particular effluent source, the President may, if the President determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vessels, vehicles, or other classes or categories of property, and access to such property, which are owned or operated by the Armed Forces of

the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at 3-year intervals.

''(E) REPORTS.—The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with the President's reason for granting such exemption.

''(6) VENUE.—Nothing in this section shall be construed to prevent any department, agency, or instrumentality of the Federal Government, or any officer, agent, or employee thereof in the performance of official duties, from removing to the appropriate Federal district court any proceeding to which the department, agency, or instrumentality or officer, agent, or employee thereof is subject pursuant to this section, and any such proceeding may be removed in accordance with chapter 89 of title 28, United States Code.

''(7) PERSONAL LIABILITY OF FEDERAL EMPLOYEES.—No agent, employee, or officer of the United States shall be personally liable for any civil

penalty under any Federal, State, interstate, or local water pollution law with respect to any act or omission within the scope of the official duties of the agent, employee, or officer.

''(8) CRIMINAL SANCTIONS.—An agent, employee, or officer of the United States shall be subject to any criminal sanction (including any fine or imprisonment) under any Federal or State water pollution law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction.''.

(b) FUNDS COLLECTED BY A STATE.—Section 313 (33 U.S.C. 1323) is further amended by adding at the end the following:

''(c) LIMITATION ON STATE USE OF FUNDS.—Unless a State law in effect on the date of the enactment of this subsection or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government in penalties and fines imposed for the violation of a substantive or procedural requirement referred to in subsection (a) shall be used by a State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.''.

(c) ENFORCEMENT.—Section 313 is further amended by adding at the end the following:

''(d) FEDERAL FACILITY ENFORCEMENT.—

''(1) ADMINISTRATIVE ENFORCEMENT BY EPA.—The Administrator may commence an administrative enforcement action against any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government pursuant to the enforcement authorities contained in this Act.

''(2) PROCEDURE.—The Administrator shall initiate an administrative enforcement action against a department, agency, or instrumentality under this subsection in the same manner and under the same circumstances as an action would be initiated against any other person under this Act. The amount of any administrative penalty imposed under this subsection shall be determined in accordance with section 309(d) of this Act.

''(3) VOLUNTARY SETTLEMENT.—Any voluntary resolution or settlement of an action under this subsection shall be set forth in an administrative consent order.

''(4) CONFERRAL WITH EPA.—No administrative order issued to a department, agency, or instru-

mentality under this section shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.''.

(d) LIMITATION ON ACTIONS AND RIGHT OF INTERVENTION.—Section 313 is further amended by adding at the end the following:

''(e) LIMITATION ON ACTIONS AND RIGHT OF INTERVENTION.—Any violation with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or for which the Administrator has issued a final order and the violator has either paid a penalty or fine assessed under this subsection or is subject to an enforceable schedule of corrective actions, shall not be the subject of an action under section 505 of this Act. In any action under this subsection, any citizen may intervene as a matter of right.''.

(e) DEFINITION OF PERSON.—Section 502(5) (33 U.S.C. 1362(5)) is amended by inserting before the period at the end the following: ''and includes any department, agency, or instrumentality of the United States''.

(f) DEFINITION OF RADIOACTIVE MATERIALS.—Section 502 (33 U.S.C. 1362) is amended by adding at the end the following:

''(24) The term 'radioactive materials' includes source materials, special nuclear materials, and byproduct

materials (as such terms are defined under the Atomic Energy Act of 1954) which are used, produced, or managed at facilities not licensed by the Nuclear Regulatory Commission; except that such term does not include any material which is discharged from a vessel or other facility covered by Executive Order 12344 (42 U.S.C. 7158 note; relating to the Naval Nuclear Propulsion Program).''.

(g) CONFORMING AMENDMENTS.—Section 313(b) (33 U.S.C. 1323(b)) is amended—

(1) by striking ''(b)(1)'' and inserting the following:

''(b) WASTEWATER FACILITIES.—

''(1) COOPERATION FOR USE OF WASTEWATER CONTROL SYSTEMS.—'';

(2) in paragraph (2) by inserting ''LIMITATION ON CONSTRUCTION.—'' before ''Construction''; and

(3) by moving paragraphs (1) and (2) 2 ems to the right.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall only apply to violations occurring after such date of enactment.

SEC. 317. CLEAN LAKES.

(a) PRIORITY LAKES.—Section 314(d)(2) (33 U.S.C. 1324(d)(2)) is amended by inserting ''Paris Twin Lakes,

Illinois; Otsego Lake, New York; Raystown Lake, Pennsylvania;'' after ''Minnesota;''.

(b) FUNDING.—Section 314 (33 U.S.C. 1324) is amended by adding at the end the following:

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $10,000,000 per fiscal year for each of fiscal years 1996 through 2000.''.

SEC. 318. COOLING WATER INTAKE STRUCTURES.

Section 316(b) (33 U.S.C. 1326(b)) is amended—

(1) by inserting after ''(b)'' the following: ''REGULATION OF COOLING WATER INTAKE STRUCTURES.—'';

(2) by inserting before ''Any'' the following: ''(1) IN GENERAL.—'';

(3) by indenting paragraph (1), as designated by paragraph (2) of this section, and moving such paragraph 2 ems to the right; and

(4) by adding at the end the following:

''(2) INTAKE STRUCTURE CONSIDERATIONS.—

''(A) IN GENERAL.—The Administrator shall require the application of the best technology available to new and existing cooling water intake structures in instances where the Administrator has determined that such a

structure is having or could have a significant adverse impact on the aquatic environment.

''(B) NEW INTAKE STRUCTURE.—In identifying the best technology available for any new cooling water intake structure pursuant to subparagraph (A), the Administrator shall consider, at a minimum, the following:

''(i) The relative technological, engineering, and economic feasibility of available intake structure technologies for minimizing adverse impacts to the aquatic environment.

''(ii) The relative technological, engineering, and economic feasibility of available alternatives as to the location, design, construction, and capacity of the intake structure.

''(iii) The relative environmental, social, and economic costs and benefits of available technologies and alternatives identified pursuant to this subparagraph or subparagraph (D).

''(iv) The projected useful life of the point source at which the new cooling water intake structure is located.

"(C) EXISTING INTAKE STRUCTURES.—In identifying the best technology available for an existing cooling water intake structure pursuant to subparagraph (A), the Administrator shall consider, at a minimum, the following:

"(i) The relative technological, engineering, and economic feasibility of reasonably available intake structure retrofit technologies for minimizing adverse impacts to the aquatic environment.

"(ii) The relative environmental, social, and economic costs and benefits of available technologies and alternatives identified pursuant to this subparagraph or subparagraph (D).

"(iii) The projected remaining useful life of the point source at which the existing cooling water intake structure is located.

"(D) CONSIDERATION OF ALTERNATIVES.—In identifying the best technology available for any new or existing cooling water intake structure, the Administrator shall consider environmental enhancements or any other technique that the owner or operator has identi-

fied as appropriate alternatives for minimizing adverse impacts to the aquatic environment.

''(3) DEFINITIONS.—In this subsection, the following definitions apply:

''(A) NEW COOLING WATER INTAKE STRUCTURE.—The term 'new cooling water intake structure' means any intake structure the construction of which commences after the publication of final regulations implementing this subsection.

''(B) EXISTING COOLING WATER INTAKE STRUCTURE.—The term 'existing cooling water intake structure' means any intake structure that is not a new cooling water intake structure.''.

SEC. 319. NONPOINT SOURCE MANAGEMENT PROGRAMS.

(a) STATE ASSESSMENT REPORT.—

(1) CONTENTS.—Section 319(a)(1)(C) (33 U.S.C. 1329(a)(1)(C)) is amended by striking ''best management practices and''.

(2) INFORMATION USED IN PREPARATION.—Section 319(a)(2) is amended—

(A) by inserting '', reviewing, and revising'' after ''developing''; and

(B) by striking ''section'' the first place it appears and inserting ''subsection''.

(3) REVIEW AND REVISION.—Section 319(a) is amended by adding at the end the following:

''(3) REVIEW AND REVISION.—Not later than 18 months after the date of the enactment of the Clean Water Amendments of 1995, and every 5 years thereafter, the State shall review, revise, and submit to the Administrator the report required by this subsection.''.

(b) STATE MANAGEMENT PROGRAM.—

(1) TERM OF PROGRAM.—Section 319(b)(1) is amended by striking ''four'' and inserting ''5''.

(2) CONTENTS.—Section 319(b)(2) is amended—

(A) in subparagraph (A)—

(i) by striking ''best'';

(ii) by striking ''paragraph (1)(B)'' and inserting ''subsection (a)(1)(B)''; and

(iii) by inserting ''and measure'' after ''practice'';

(B) in subparagraph (B)—

(i) by striking ''nonregulatory or regulatory programs for enforcement,'' and inserting ''one or more of the following: vol-

untary programs, incentive-based programs, regulatory programs, enforceable policies and mechanisms, State management programs approved under section 306 of the Coastal Zone Management Act of 1972,''; and

(ii) by striking ''achieve implementation'' and all that follows before the period and inserting ''manage categories, subcategories, or particular nonpoint sources to the degree necessary to provide for reasonable further progress toward the goal of attaining water quality standards within 15 years of approval of the State program for those waters identified under subsection (a)(1)(A)'';

(C) by striking subparagraph (C) and inserting the following:

''(C) A schedule containing interim goals and milestones for making reasonable progress toward the attainment of standards, which may be demonstrated by one or any combination of the following: improvements in water quality (including biological indicators), documented implementation of voluntary nonpoint source

control practices and measures, and adoption of enforceable policies and mechanisms.''; (D) in subparagraph (D) by striking ''A certification of'' and inserting ''After the date of the enactment of the Clean Water Amendments of 1995, a certification by''; and

(E) by adding at the end the following:

''(G) A description of the monitoring or other assessment which will be carried out under the program for the purposes of monitoring and assessing the effectiveness of the program, including the attainment of interim goals and milestones.

''(H) An identification of activities on Federal lands in the State that are inconsistent with the State management program.

''(I) An identification of goals and milestones for progress in attaining water quality standards, including a projected date for attaining such standards as expeditiously as practicable but not later than 15 years after the date of approval of the State program for each of the waters listed pursuant to subsection (a).''.

(3) UTILIZATION OF LOCAL AND PRIVATE EXPERTS.—Section 319(b)(3) is amended by inserting before the period at the end the following: ‘‘, including academic institutions, private industry experts, and other individual experts in water resource conservation and planning’’.

(4) NEW TECHNOLOGIES; USE OF RESOURCES; AGRICULTURAL PROGRAMS.—Section 319(b) is amended by adding at the end the following:

‘‘(5) RECOGNITION OF NEW TECHNOLOGIES.—In developing and implementing a management program under this subsection, a State may recognize and utilize new practices, technologies, processes, products, and other alternatives.

‘‘(6) EFFICIENT AND EFFECTIVE USE OF RESOURCES.—In developing and implementing a management program under this subsection, a State may recognize and provide for a methodology which takes into account situations in which management measures used to control one pollutant have an adverse impact with respect to another pollutant. The methodology should encourage the balanced combination of measures which best address the various impairments on the watershed or site.

"(7) RECOGNITION OF AGRICULTURAL PROGRAMS.—Any agricultural producer who has voluntarily developed and is implementing an approved whole farm or ranch natural resources management plan shall be considered to be in compliance with the requirements of a State program developed under this section—

"(A) if such plan has been developed under a program subject to a memorandum of agreement between the Chief of the Natural Resources Conservation Service and the Governor, or their respective designees; and

"(B) if such memorandum of agreement specifies—

"(i) the scope and content of the Natural Resources Conservation Service program (not an individual farm or ranch plan) in the State or regions of the State;

"(ii) the terms of approval, implementation, and duration of a voluntary farm or ranch plan for agricultural producers;

"(iii) the responsibilities for assessing implementation of voluntary whole farm and ranch natural resource management plans; and

"(iv) the duration of such memorandum of agreement.

At a minimum, such memorandum of agreement shall be reviewed and may be revised every 5 years, as part of the State review of its management program under this section.".

(c) SUBMISSION OF MANAGEMENT PROGRAMS.—Paragraph (2) of section 319(c) is amended to read as follows:

"(2) TIME PERIOD FOR SUBMISSION OF MANAGEMENT PROGRAMS.—Each management program shall be submitted to the Administrator within 30 months of the issuance by the Administrator of the final guidance under subsection (o) and every 5 years thereafter. Each program submission after the initial submission following the date of the enactment of the Clean Water Amendments of 1995 shall include a demonstration of reasonable further progress toward the goal of attaining water quality standards within 15 years of approval of the State program, including documentation of the degree to which the State has achieved the interim goals and milestones contained in the previous program submission. Such demonstration shall take into account

the adequacy of Federal funding under this section.''.

(d) APPROVAL AND DISAPPROVAL OF REPORTS AND MANAGEMENT PROGRAMS.—

(1) DEADLINE.—Section 319(d)(1) is amended by inserting ''or revised report'' after ''any report''.

(2) DISAPPROVAL.—Section 319(d)(2) is amended—

(A) in subparagraph (B) by inserting before the semicolon the following: ''; except that such program or portion shall not be disapproved solely because the program or portion does not include enforceable policies or mechanisms'';

(B) in subparagraph (D) by striking ''are not adequate'' and all that follows before the semicolon and inserting the following: ''will not result in reasonable further progress toward the attainment of applicable water quality standards under section 303 as expeditiously as possible but not later than 15 years after approval of the State program''; and

(C) in the text following subparagraph (D)—

(i) by striking ''3 months'' and inserting ''6 months''; and

(ii) by inserting ''or portion thereof'' before ''within three months of receipt''.

(3) FAILURE TO SUBMIT REPORT.—Section 319(d)(3) is amended—

(A) by striking ''the report'' and inserting ''a report or revised report'';

(B) by striking ''30 months'' and inserting ''18 months''; and

(C) by striking ''of the enactment of this section'' and inserting ''on which such report is required to be submitted under subsection (a)''.

(4) PROGRAM MANAGEMENT BY THE ADMINISTRATOR.—Section 319(d) is amended by adding at the end the following:

''(4) FAILURE OF STATE TO SUBMIT PROGRAM.—

''(A) PROGRAM MANAGEMENT BY THE ADMINISTRATOR.—If a State fails to submit a management program or revised management program under subsection (b) or the Administrator disapproves such management program, the Administrator shall prepare and implement a management program for controlling pollution

added from nonpoint sources to the navigable waters within the State and improving the quality of such waters in accordance with subsection (b).

''(B) NOTICE AND HEARING.—If the Administrator intends to disapprove a program submitted by a State, the Administrator shall first notify the Governor of the State in writing of the modifications necessary to meet the requirements of this section. The Administrator shall provide adequate public notice and an opportunity for a public hearing for all interested parties.

''(C) STATE REVISION OF ITS PROGRAM.—If, after taking into account the level of funding actually provided as compared with the level authorized under subsection (j), the Administrator determines that a State has failed to demonstrate reasonable further progress toward the attainment of water quality standards as required, the State shall revise its program within 12 months of that determination in a manner sufficient to achieve attainment of applicable water quality standards by the deadline established by this Act. If a State fails to make such

a program revision or the Administrator disapproves such a revision, the Administrator shall prepare and implement a nonpoint source management program for the State.''.

(e) TECHNICAL ASSISTANCE.—Section 319(f) is amended by inserting ''and implementing'' after ''developing''.

(f) GRANT PROGRAM.—

(1) IN GENERAL.—Section 319(h)(1) is amended—

(A) by amending the paragraph heading to read as follows: ''GRANTS FOR PREPARATION AND IMPLEMENTATION OF REPORTS AND MANAGEMENT PROGRAMS.—'';

(B) by striking ''for which a report submitted under subsection (a) and a management program submitted under subsection (b) is approved under this section'';

(C) by striking ''the Administrator shall make grants'' and inserting ''the Administrator may make grants under this subsection'';

(D) by striking ''under this subsection to such State'' and inserting ''to such State'';

(E) by striking ''implementing such management program'' and inserting ''preparing a

report under subsection (a) and in preparing and implementing a management program under subsection (b)'';

(F) by inserting after the first sentence the following: ''Grants for implementation of such management program may be made only after such report and management program are approved under this section.''; and

(G) by adding at the end the following: ''The Administrator is authorized to provide funds to a State if necessary to implement an approved portion of a State program or, with the approval of the Governor of the State, to implement a component of a federally established program. The Administrator may continue to make grants to any State with an program approved on the day before the date of the enactment of the Clean Water Amendments of 1995 until the Administrator withdraws the approval of such program or the State fails to submit a revision of such program in accordance with subsection (c)(2).''.

(2) FEDERAL SHARE.—Section 319(h)(3) is amended—

(A) by striking ''management program implemented'' and inserting ''report prepared and management program prepared and implemented'';

(B) by striking ''60 percent'' and inserting ''75 percent'';

(C) by striking ''implementing such management program'' and inserting ''preparing such report and preparing and implementing such management program''; and

(D) by inserting ''of program implementation'' after ''non-Federal share''.

(3) LIMITATION ON GRANT AMOUNTS.—Section 319(h)(4) is amended—

(A) by inserting before the first sentence the following: ''The Administrator shall establish, after consulting with the States, maximum and minimum grants for any fiscal year to promote equity between States and effective nonpoint source management.''; and

(B) by adding at the end the following: ''The minimum percentage of funds allocated to each State shall be 0.5 percent of the amount appropriated.''.

(4) ALLOCATION OF GRANT FUNDS.—Paragraph (5) of section 319(h) is amended to read as follows:

''(5) ALLOCATION OF GRANT FUNDS.—Grants under this section shall be allocated to States with approved programs in a fair and equitable manner and be based upon rules and regulations promulgated by the Administrator which shall take into account the extent and nature of the nonpoint sources of pollution in each State and other relevant factors.''.

(5) USE OF FUNDS.—Paragraph (7) of section 319(h) is amended to read as follows:

''(7) USE OF FUNDS.—A State may use grants made available to the State pursuant to this section for activities relating to nonpoint source water pollution control, including—

''(A) providing financial assistance with respect to those activities whose principal purpose is protecting and improving water quality;

''(B) assistance related to the cost of preparing or implementing the State management program;

''(C) providing incentive grants to individuals to implement a site-specific water quality

plan in amounts not to exceed 75 percent of the cost of the project from all Federal sources;

''(D) land acquisition or conservation easements consistent with a site-specific water quality plan;

''(E) providing financial assistance with respect to those water pollution control activities which have as their principal purpose the protection of public water supplies; and

''(F) restoring and maintaining the chemical, physical, and biological integrity of urban and rural waters and watersheds (including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish, and wildlife, aquatic and riparian vegetation, and recreational activities in and on the water) and protecting designated uses, including fishing, swimming, and drinking water supply.''.

(6) COMPLIANCE WITH STATE MANAGEMENT PROGRAM.—Paragraph (8) of section 319(h) is amended to read as follows:

''(8) COMPLIANCE WITH STATE MANAGEMENT PROGRAM.—In any fiscal year for which the Administrator determines that a State has not made satis-

factory progress in the preceding fiscal year in meeting the schedule specified for such State under subsection (b)(2)(C), the Administrator is authorized to withhold grants pursuant to this section in whole or in part to the State after adequate written notice is provided to the Governor of the State.''.

(7) ALLOTMENT STUDY.—Section 319(h) is amended by adding at the end the following:

''(13) ALLOTMENT STUDY.—

''(A) STUDY.—The Administrator, in consultation with the States, shall conduct a study of whether the allocation of funds under paragraph (5) appropriately reflects the needs and costs of nonpoint source control measures for different nonpoint source categories and subcategories and of options for better reflecting such needs and costs in the allotment of funds.

''(B) REPORT.—Not later than 5 years after the date of the enactment of the Clean Water Amendments of 1995, the Administrator shall transmit to Congress a report on the results of the study conducted under this subsection, together with recommendations.''.

(g) GRANTS FOR PROTECTING GROUND WATER QUALITY.—Section 319(i)(3) is amended by striking ''$150,000'' and inserting ''$500,000''.

(h) AUTHORIZATION OF APPROPRIATIONS.—Section 319(j) is amended—

(1) by striking ''and'' before ''$130,000,000'';

(2) by inserting after ''1991'' the following: '', such sums as may be necessary for fiscal years 1992 through 1995, $100,000,000 for fiscal year 1996, $150,000,000 for fiscal year 1997, $200,000,000 for fiscal year 1998, $250,000,000 for fiscal year 1999, and $300,000,000 for fiscal year 2000''; and

(3) by striking ''$7,500,000'' and inserting ''$25,000,000''.

(i) CONSISTENCY OF OTHER PROGRAMS AND PROJECTS WITH MANAGEMENT PROGRAMS.—Section 319(k) (33 U.S.C. 1329(k)) is amended—

(1) by striking ''allow States to review'' and inserting ''require coordination with States in'';

(2) by inserting before the period at the end the following: ''and the State watershed management program''; and

(3) by adding at the end the following: ''Federal agencies that own or manage land, or issue licenses for activities that cause nonpoint source pol-

lution from such land, shall coordinate their nonpoint source control measures with the State nonpoint source management program and the State watershed management program. A Federal agency and the Governor of an affected State shall enter into a memorandum of understanding to carry out the purposes of this paragraph. Such a memorandum of understanding shall not relieve the Federal agency of the agency's obligation to comply with its own mandates.''.

(j) REPORTS OF THE ADMINISTRATOR.—

(1) BIENNIAL REPORTS.—Section 319(m)(1) is amended—

(A) in the paragraph heading by striking ''ANNUAL'' and inserting ''BIENNIAL''; and

(B) by striking ''1988, and each January 1'' and inserting ''1995, and biennially''.

(2) CONTENTS.—Section 319(m)(2) is amended—

(A) by striking the paragraph heading and all that follows before ''at a minimum'' and inserting ''CONTENTS.—Each report submitted under paragraph (1),'';

(B) in subparagraph (A) by striking ''best management practices'' and inserting ''measures''; and

(C) in subparagraph (B) by striking ''best management practices'' and inserting ''the measures provided by States under subsection (b)''.

(k) SET ASIDE FOR ADMINISTRATIVE PERSONNEL.—Section 319(n) is amended by striking ''less'' and inserting ''more''.

(l) GUIDANCE ON MODEL MANAGEMENT PRACTICES AND MEASURES.—Section 319 is further amended by adding at the end the following:

''(o) GUIDANCE ON MODEL MANAGEMENT PRACTICES AND MEASURES.—

''(1) IN GENERAL.—The Administrator shall publish guidance to identify model management practices and measures which may be undertaken, at the discretion of the State or appropriate entity, under a management program established pursuant to this section.

''(2) CONSULTATION; PUBLIC NOTICE AND COMMENT.—The Administrator shall develop the model management practices and measures under paragraph (1) in consultation with the National Oceanic

and Atmospheric Administration, other appropriate Federal and State departments and agencies, and academic institutions, private industry experts, and other individual experts in water conservation and planning, and after providing notice and opportunity for public comment.

''(3) PUBLICATION.—The Administrator shall publish proposed guidance under this subsection not later than 6 months after the date of the enactment of this subsection and shall publish final guidance under this subsection not later than 18 months after such date of enactment. The Administrator shall periodically review and revise the final guidance at least once every 3 years after its publication.

''(4) MODEL MANAGEMENT PRACTICES AND MEASURES DEFINED.—For the purposes of this subsection, the term 'model management practices and measures' means economically achievable measures for the control of the addition of pollutants from nonpoint sources of pollution which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives. The Administrator may distinguish among classes,

types, and sizes within any category of nonpoint sources.''.

(m) INADEQUATE FUNDING.—Section 319 is further amended by adding at the end the following:

''(p) INADEQUATE FUNDING.—For each fiscal year beginning after the date of the enactment of this subsection for which the total of amounts appropriated to carry out this section are less than the total of amounts authorized to be appropriated pursuant to subsection (h), the deadline for compliance with any requirement of this section, including any deadline relating to assessment reports or State program implementation or monitoring efforts, shall be postponed by 1 year, unless the Administrator and the State jointly certify that the amounts appropriated are sufficient to meet the requirements of this section.''.

(n) COASTAL ZONE MANAGEMENT.—Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. 1451 note) is amended—

(1) in subsection (a)(1)—

(A) by inserting ''(A)'' after ''PROGRAM DEVELOPMENT.—''; and

(B) by adding at the end the following:

''(B) A State that has not received Federal approval for the State's core coastal management pro-

gram pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) shall have 30 months from the date of approval of such program to submit a Coastal Nonpoint Pollution Program pursuant to this section. Any such State shall also be eligible for any extension of time for submittal of the State's nonpoint program that may be received by a State with a federally approved coastal management program.'';

(2) in subsection (b), in the matter preceding paragraph (1), by striking ''to protect coastal waters generally'' and inserting ''to restore and protect coastal waters where the State has determined that coastal waters are threatened or significantly degraded'';

(3) in subsection (b)(3)—

(A) by striking ''The implementation'' and inserting ''A schedule for the implementation''; and

(B) by inserting '', and no less often than once every 5 years,'' after ''from time to time'';

(4) in subsection (b) by adding at the end the following:

''(8) IDENTIFICATION OF PRIORITY AREAS.—A prioritization of the areas in the State in which management measures will be implemented.'';

(5) in subsection (c) by adding at the end the following:

''(5) CONDITIONAL APPROVAL.—The Secretary and Administrator may grant conditional approval to a State's program where the State requests additional time to complete the development of its program. During the period during which the State's program is subject to conditional approval, the penalty provisions of paragraphs (3) and (4) shall not apply.'';

(6) in subsection (h)(1) by striking '', 1993, and 1994'' and inserting ''through 2000''; and

(7) in subsection (h)(2)(B)(iv) by striking ''fiscal year 1995'' and inserting ''each of fiscal years 1995 through 2000''.

(o) AGRICULTURAL INPUTS.—Section 319 is further amended by adding at the end the following:

''(q) AGRICULTURAL INPUTS.—For the purposes of this Act, any land application of agricultural inputs, including livestock manure, shall not be considered a point source and shall be subject to enforcement only under this section.''.

(p) PURPOSE.—Section 319 (33 U.S.C. 1329) is further amended by adding at the end the following:

''(r) PURPOSE.—The purpose of this section is to assist States in addressing nonpoint sources of pollution where necessary to achieve the goals and requirements of this Act. It is recognized that State nonpoint source programs need to be built upon a foundation that voluntary initiatives represent the approach most likely to succeed in achieving the objectives of this Act.''.

(q) CONTROL OF SALT WATER INTRUSION.—Section 319 is further amended by adding at the end the following:

''(s) CONTROL OF SALT WATER INTRUSION.—Nothing in this section authorizes the Administrator to require a State to identify or establish procedures and methods to control salt water intrusion beyond what is provided for in section 208(b)(2)(I).''.

SEC. 320. NATIONAL ESTUARY PROGRAM.

(a) TECHNICAL AMENDMENT.—Section 320(a)(2)(B) (33 U.S.C. 1330(a)(2)(B)) is amended to read as follows:

''(B) PRIORITY CONSIDERATION.—The Administrator shall give priority consideration under this section to Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Massachusetts Bay, Massachusetts (including

Cape Cod Bay and Boston Harbor); Puget Sound, Washington; New York-New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albemarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; Santa Monica Bay, California; Galveston Bay, Texas; Barataria-Terrebonne Bay estuary complex, Louisiana; Indian River Lagoon, Florida; Charlotte Harbor, Florida; Barnegat Bay, New Jersey; and Peconic Bay, New York.''.

(b) GRANTS.—Section 320(g)(2) (33 U.S.C. 1330(g)(2)) is amended by inserting ''and implementation monitoring'' after ''development''.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 320(i) (33 U.S.C. 1330(i)) is amended by striking ''1987'' and all that follows through ''1991'' and inserting the following: ''1987 through 1991, such sums as may be necessary for fiscal years 1992 through 1995, and $19,000,000 per fiscal year for each of fiscal years 1996 through 2000''.

SEC. 321. STATE WATERSHED MANAGEMENT PROGRAMS.

(a) ESTABLISHMENT.—Title III (33 U.S.C. 1311–1330) is amended by adding at the end the following:

"SEC. 321. STATE WATERSHED MANAGEMENT PROGRAMS.

''(a) STATE WATERSHED MANAGEMENT PROGRAM.—

''(1) SUBMISSION OF PROGRAM TO ADMINISTRATOR.—A State, at any time, may submit a watershed management program to the Administrator for approval.

''(2) APPROVAL.—If the Administrator does not disapprove a State watershed management program within 180 days of its submittal or 240 days of a request for a public hearing pursuant to paragraph (3) with respect to the program, whichever is later, such program shall be deemed approved for the purposes of this section. The Administrator shall approve the program if the program includes, at a minimum, the following elements:

''(A) The identification of the State agency with primary responsibility for overseeing and approving watershed management plans in general.

''(B) The description of any responsible entities (including any appropriate State agency or substate agency) to be utilized in implementing the program and a description of their responsibilities.

''(C) A description of the scope of the program. In establishing the scope of the program, the State may address one or more watersheds, or pollutants, concurrently or sequentially. The scope of the State program may expand over time with respect to the watersheds, pollutants, and factors to be addressed under the program. In developing the State program, the State shall take into account all regional and local government watershed management programs that are consistent with the proposed State program and shall consult with the regional and local governments that developed such programs. The State shall consider recommendations from units of general purpose government, special purpose districts, local water suppliers, and appropriate water management agencies in the development and scope of the program.

''(D) Provisions for carrying out an analysis, consistent with the established scope of the program, of the problems within each watershed covered under the program.

''(E) An identification of watershed management units for which management plans will be developed, taking into consideration those

waters where water quality is threatened or impaired or otherwise in need of special protection. A watershed management unit identified under the program may include waters and associated land areas in more than 1 State if the Governors of the States affected jointly designate the watershed management unit and may include waters and associated lands managed or owned by the Federal Government.

''(F) A description of the activities required of responsible entities (as specified under subsection (e)(1)) and a description of the watershed plan approval process of the State.

''(G) Documentation of the public participation in development of the program and description of the procedures that will be used for public participation in the development and implementation of watershed plans.

''(H) The identification of goals that will be pursued in each watershed, including attainment of State water quality standards (including site-specific water quality standards) and the goals and objectives of this Act.

''(I) An exclusion from the program of federally approved activities with respect to linear

utility facilities, such as natural gas pipelines if such facilities extend to multiple watersheds and result in temporary or de minimis impacts.

''(J) A description of the process for consideration of and achieving consistency with the purposes of sections 319 and 322.

''(3) DISAPPROVAL PROCESS.—If the Administrator intends to disapprove a program of a State submitted under this subsection, the Administrator shall by a written notification advise the State of the intent to disapprove and the reasons for disapproval. If, within 30 days of receipt of such notice, a State so requests, the Administrator shall conduct a public hearing in the State on the intent to disapprove and the reasons for such disapproval. A State may resubmit a revised program that addresses the reasons contained in the notification. If a State requests a public hearing, the Administrator shall conduct the hearing in that State and issue a final determination within 240 days of receipt of the State watershed management program submittal.

''(4) MODIFICATION OF PROGRAM.—Each State with a watershed management program that has been approved by the Administrator under this section may, at any time, modify the watershed man-

agement program. Any such modification shall be submitted to the Administrator and shall remain in effect unless and until the Administrator determines that the modified program no longer meets the requirements of this section. In such event, the provisions of paragraph (3) shall apply.

''(5) STATUS REPORTS.—Each State with a watershed management program that has been approved by the Administrator pursuant to this subsection shall, not later than 1 year after the date of approval, and annually thereafter, submit to the Administrator an annual watershed program summary status report that includes descriptions of any modifications to the program. The status report shall include a listing of requests made for watershed plan development and a listing of plans prepared and submitted by local or regional entities and the actions taken by the State on such plans including the reasons for those actions. In consultation and coordination with the Administrator, a State may use the report to satisfy, in full or in part, any reporting requirements under sections 106, 303(d), 305(b), 314, 319, 320, 322, and 604(b).

''(b) WATERSHED AREA IN 2 OR MORE STATES.—If a watershed management unit is designated to include

land areas in more than 1 State, the Governors of States having jurisdiction over any lands within the watershed management unit shall jointly determine the responsible entity or entities.

''(c) ELIGIBLE WATERSHED MANAGEMENT AND PLANNING ACTIVITIES.—

''(1) IN GENERAL.—In addition to activities eligible to receive assistance under other sections of this Act as of the date of the enactment of this subsection, the following watershed management activities conducted by or on behalf of the States pursuant to a watershed management program that is approved by the Administrator under this section shall be considered to be eligible to receive assistance under sections 106, 205(j), 319(h), 320, and 604(b):

''(A) Characterizing the waters and land uses.

''(B) Identifying and evaluating problems within the watershed.

''(C) Selecting short-term and long-term goals for watershed management.

''(D) Developing and implementing water quality standards, including site-specific water quality standards.

''(E) Developing and implementing measures and practices to meet identified goals.

''(F) Identifying and coordinating projects and activities necessary to restore or maintain water quality or other related environmental objectives within the watershed.

''(G) Identifying the appropriate institutional arrangements to carry out a watershed management plan that has been approved or adopted by the State under this section.

''(H) Updating the plan.

''(I) Conducting training and public participation activities.

''(J) Research to study benefits of existing watershed program plans and particular aspects of the plans.

''(K) Implementing any other activity considered appropriate by the Administrator or the Governor of a State with an approved program.

''(2) FACTORS TO BE CONSIDERED.—In selecting watershed management activities to receive assistance pursuant to paragraph (1), the following factors shall be considered:

''(A) Whether or not the applicant has demonstrated success in addressing water qual-

ity problems with broadbased regional support, including public and private sources.

''(B) Whether the activity will promote watershed problem prioritization.

''(C) Whether or not the applicant can demonstrate an ability to use Federal resources to leverage non-Federal public and private monetary and in-kind support from voluntary contributions, including matching and cost sharing incentives.

''(D) Whether or not the applicant proposes to use existing public and private programs to facilitate water quality improvement with the assistance to be provided pursuant to paragraph (1).

''(E) Whether or not such assistance will be used to promote voluntary activities, including private wetlands restoration, mitigation banking, and pollution prevention to achieve water quality standards.

''(F) Whether or not such assistance will be used to market mechanisms to enhance existing programs.

''(d) PUBLIC PARTICIPATION.—Each State shall establish procedures to encourage the public to participate

in its program and in developing and implementing comprehensive watershed management plans under this section. A State watershed management program shall include a process for public involvement in watershed management, to the maximum extent practicable, including the formation and participation of public advisory groups during State watershed program development. States must provide adequate public notice and an opportunity to comment on the State watershed program prior to submittal of the program to the Administrator for approval.

''(e) APPROVED OR STATE-ADOPTED PLANS.—

''(1) REQUIREMENTS.—A State with a watershed management program that has been approved by the Administrator under this section may approve or adopt a watershed management plan if the plan satisfies the following conditions:

''(A) If the watershed includes waters that are not meeting water quality standards at the time of submission, the plan—

''(i) identifies the objectives of the plan, including, at a minimum, State water quality standards (including site-specific water quality standards) and goals and objectives under this Act;

''(ii) identifies pollutants, sources, activities, and any other factors causing the impairment of the waters;

''(iii) identifies cost effective actions that are necessary to achieve the objectives of the plan, including reduction of pollutants to achieve any allocated load reductions consistent with the requirements of section 303(d), and the priority for implementing the actions;

''(iv) contains an implementation schedule with milestones and the identification of persons responsible for implementing the actions;

''(v) demonstrates that water quality standards and other goals and objectives of this Act will be attained as expeditiously as practicable but not later than any applicable deadline under this Act;

''(vi) contains documentation of the public participation in the development of the plan and a description of the public participation process that will be used during the plan implementation;

''(vii) specifies a process to monitor and evaluate progress toward meeting of the goals of the plan; and

''(viii) specifies a process to revise the plan as necessary.

''(B) For waters in the watershed attaining water quality standards at the time of submission (including threatened waters), the plan identifies the projects and activities necessary to maintain water quality standards and attain or maintain other goals after the date of approval or adoption of the plan.

''(2) TERMS OF APPROVED OR ADOPTED PLAN.—Each plan that is approved or adopted by a State under this subsection shall be effective for a period of not more than 10 years and include a planning and implementation schedule with milestones within that period. A revised and updated plan may be approved or adopted by the State prior to the expiration of the period specified in the plan pursuant to the same conditions and requirements that apply to an initial plan for a watershed approved under this subsection.

''(f) GUIDANCE.—Not later than 1 year after the date of the enactment of this section, the Administrator, after

consultation with the States and other interested parties, shall issue guidance on provisions that States may consider for inclusion in watershed management programs and State-approved or State-adopted watershed management plans under this section.

''(g) POLLUTANT TRANSFER OPPORTUNITIES.—

''(1) POLLUTANT TRANSFER PILOT PROJECTS.—Under an approved watershed management program, any discharger or source may apply to a State for approval to offset the impact of its discharge or release of a pollutant by entering into arrangements, including the payment of funds, for the implementation of controls or measures by another discharger or source through a pollution reduction credits trading program established as part of the watershed management plan. The State may approve such a request if appropriate safeguards are included to ensure compliance with technology based controls and to protect the quality of receiving waters.

''(2) INCENTIVE GRANTS.—The Administrator shall allocate sums made available by appropriations to carry out pollution reduction credits trading programs in selected watersheds throughout the country.

''(3) REPORT.—Not later than 36 months after the date of the enactment of this Act, the Administrator shall transmit to Congress a report on the results of the program conducted under this subsection.''.

(b) INCENTIVES FOR WATERSHED MANAGEMENT.—

(1) POINT SOURCE PERMITS.—Section 402 (33 U.S.C. 1342) is further amended by adding at the end the following:

''(r) WATERSHED MANAGEMENT.—

''(1) IN GENERAL.—Notwithstanding any other provision of this Act, a permit may be issued under this section with a limitation that does not meet applicable water quality standards if—

''(A) the receiving water is in a watershed with a watershed management plan that has been approved pursuant to section 321;

''(B) the plan includes assurances that water quality standards will be met within the watershed by a specified date; and

''(C) the point source does not have a history of significant noncompliance with its effluent limitations under a permit issued under this section, as determined by the Administrator or

a State with authority to issue permits under this section.

''(2) SYNCHRONIZED PERMIT TERMS.—Notwithstanding subsection (b)(1)(B), the term of a permit issued under this section may be extended for an additional period if the discharge is located in a watershed management unit for which a watershed management plan will be developed pursuant to section 321. Permits extended under this paragraph shall be synchronized with the approval of the watershed management plan of a State adopted pursuant to section 321.''.

(2) MULTIPURPOSE GRANTS.—

(A) IN GENERAL.—The Administrator may provide assistance to a State with a watershed management program that has been approved by the Administrator under section 321 in the form of a multipurpose grant that would provide for single application, work plan and review, matching, oversight, and end-of-year closeout requirements for grant funding under sections 104(b)(3), 104(g), 106, 314(b), 319, 320, and 604(b) of the Federal Water Pollution Control Act.

(B) TERMS.—The Administrator may attach terms that shall apply for more than 1 year to grants made pursuant to this paragraph. A State that receives a grant under this paragraph may focus activities funded under the provisions referred to in subparagraph (A) on a priority basis in a manner consistent with watershed management plans approved by the State under section 321(e) of the Federal Water Pollution Control Act.

(3) PLANNING.—Section 604(b) (33 U.S.C. 1384(b)) is amended by adding at the end the following: ''In any fiscal year in which a State is implementing a State watershed management program approved under section 321, the State may reserve up to an additional 2 percent of the sums allotted to the State for such fiscal year for development of watershed management plans under such program or $200,000, whichever is greater, if 50 percent of the amount reserved under this sentence will be made available to local entities.''.

SEC. 322. STORMWATER MANAGEMENT PROGRAMS.

(a) STATE PROGRAMS.—Title III (33 U.S.C. 1311 et seq.) is further amended by adding at the end the following new section:

"SEC. 322. STORMWATER MANAGEMENT PROGRAMS.

''(a) PURPOSE.—The purpose of this section is to assist States in the development and implementation of stormwater control programs in an expeditious and cost effective manner so as to enable the goals and requirements of this Act to be met in each State no later than 15 years after the date of approval of the stormwater management program of the State. It is recognized that State stormwater management programs need to be built on a foundation that voluntary pollution prevention initiatives represent an approach most likely to succeed in achieving the objectives of this Act.

''(b) STATE ASSESSMENT REPORTS.—

''(1) CONTENTS.—After notice and opportunity for public comment, the Governor of each State, consistent with or as part of the assessment required by section 319, shall prepare and submit to the Administrator for approval, a report which—

''(A) identifies those navigable waters within the State which, without additional action to control pollution from stormwater discharges, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this Act;

''(B) identifies those categories and subcategories of stormwater discharges that add

significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

''(C) describes the process, including intergovernmental coordination and public participation, for identifying measures to control pollution from each category and subcategory of stormwater discharges identified in subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such discharges; and

''(D) identifies and describes State, local, and as may be appropriate, industrial programs for controlling pollution added from stormwater discharges to, and improving the quality of, each such portion of the navigable waters.

''(2) INFORMATION USED IN PREPARATION.—In developing, reviewing, and revising the report required by this subsection, the State—

''(A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), 314, 319, 320, and 321 and subsection (h) of this section, information developed from

the group stormwater permit application process in effect under section 402(p) of this Act on the day before the date of the enactment of this Act, and such other information as the State determines is appropriate; and

''(B) may utilize appropriate elements of the waste treatment management plans developed pursuant to sections 208(b) and 303, to the extent such elements are consistent with and fulfill the requirements of this section.

''(3) REVIEW AND REVISION.—Not later than 18 months after the date of the enactment of the Clean Water Amendments of 1995, and every 5 years thereafter, the State shall review, revise, and submit to the Administrator the report required by this subsection.

''(c) STATE MANAGEMENT PROGRAMS.—

''(1) IN GENERAL.—In substantial consultation with local governments and after notice and opportunity for public comment, the Governor of each State for the State or in combination with the Governors of adjacent States shall prepare, based on available information, and submit to the Administrator for approval a stormwater management program—

"(A) that controls pollution added from stormwater discharges to the navigable waters within the boundaries of the State and improves the quality of such waters; and

"(B) that the State proposes to establish and administer under State law or interstate compact to apply and assure compliance with this section.

The initial program submission must meet the requirements of this subsection and specifically address the first 5 fiscal years beginning after the date of submission of such management program.

"(2) SPECIFIC CONTENTS.—Each management program proposed for implementation under this subsection shall include the following:

"(A) IDENTIFICATION OF MODEL MANAGEMENT PRACTICES AND MEASURES.—Identification of the model management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category or subcategory of stormwater discharges designated under subsection (b)(1)(B), taking into account the impact of the practice and measure on ground water quality.

"(B) IDENTIFICATION OF PROGRAMS AND RESOURCES.—Identification of programs and resources necessary (including, as appropriate, nonregulatory programs or regulatory programs, enforceable policies and mechanisms, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to manage categories or subcategories of stormwater discharges to the degree necessary to provide for reasonable further progress toward the goal of attainment of water quality standards which contain the stormwater criteria for designated uses of receiving waters identified under subsection (b)(1)(A) taking into consideration specific watershed conditions, by not later than the last day of the 15-year period beginning on the date of approval of the State program.

"(C) PROGRAM FOR INDUSTRIAL, COMMERCIAL, OIL, GAS, AND MINING DISCHARGES.—A program for categories or subcategories of industrial, commercial, oil, gas, and mining stormwater discharges identified under subsection (b)(1)(B) for the implementation of management practices, measures, and programs

identified under subparagraphs (A) and (B). The program shall include each of the following:

"(i) VOLUNTARY ACTIVITIES.—Voluntary stormwater pollution prevention activities for categories and subcategories of such stormwater discharges that are not contaminated by contact with material handling equipment or activities, heavy industrial machinery, raw materials, intermediate products, finished products, by-products, or waste products at the site of the industrial, commercial, oil, gas, or mining activity. Such discharges may have incidental contact with buildings or motor vehicles.

"(ii) ENFORCEABLE PLANS.—Enforceable stormwater pollution prevention plans meeting the requirements of subsection (d) for those categories and subcategories of such stormwater discharges that are not described in clause (i).

"(iii) GENERAL PERMITS.—General permits for categories and subcategories of such stormwater discharges if the State

finds, based on available information and after providing notice and an opportunity for comment, that reasonable further progress toward achieving water quality standards in receiving waters identified by the State by the date referred to in subparagraph (B) cannot be made despite implementation of voluntary activities under clause (i) or prevention plans under clause (ii) due to the presence of a pollutant or pollutants identified by the State. A facility in a category or subcategory identified by the State shall not be subject to a general permit under this clause if the facility demonstrates that stormwater discharges from the facility are not contributing to a violation of a water quality standard established for designated uses of the receiving waters and are not significantly contributing the pollutant or pollutants identified by the State with respect to the receiving waters under this clause.

''(iv) SITE-SPECIFIC PERMITS.—Site-specific permits for categories or subcategories of such stormwater dis-

charges or individual facilities in such categories or subcategories if the State finds, based on available information and after providing notice and an opportunity for comment, that reasonable further progress toward achieving water quality standards in receiving waters identified by the State by the date referred to in subparagraph (B) cannot be made despite implementation of voluntary activities under clause (i) or prevention plans under clause (ii) and general permits under clause (iii) due to the presence of a pollutant or pollutants identified by the State. A facility in a category or subcategory identified by the State shall not be subject to a site-specific permit under this clause if the facility demonstrates that stormwater discharges from the facility are not contributing to a violation of a water quality standard established for designated uses of the receiving waters and are not significantly contributing the pollutant or pollutants identified by the State with respect to the receiving waters under this clause.

"(v) EXEMPTION OF SMALL BUSINESSES.—An exemption for small businesses identified under subsection (b)(1)(B) from clause (iii), relating to general permits, and clause (iv), relating to site-specific permits, unless the State finds that, without the imposition of such permits, such discharges will have a significant adverse effect on water quality.

"(D) PROGRAM FOR MUNICIPAL DISCHARGES.—A program for municipal stormwater discharges identified under subsection (b)(1)(B) to reduce pollutant loadings from categories and subcategories of municipal stormwater discharges.

"(E) PROGRAM FOR CONSTRUCTION ACTIVITIES.—A program for categories and subcategories of stormwater discharges from construction activities identified under subsection (b)(1)(B) for implementation of management practices, measures, and programs identified under subparagraphs (A) and (B). In developing the program, the State shall consider current State and local requirements, focus on pollution prevention through the use of model

management practices and measures, and take into account the land area disturbed by the construction activities. The State may require effluent limits or other numerical standards to control pollutants in stormwater discharges from construction activities only if the State finds, after providing notice and an opportunity for comment, that such standards are necessary to achieve water quality standards by the date referred to in subparagraph (B).

''(F) BAD ACTOR PROVISIONS.—Provisions for taking any actions deemed necessary by the State to meet the goals and requirements of this section with respect to dischargers which the State identifies, after notice and opportunity for hearing—

''(i) as having a history of stormwater noncompliance under this Act, State law, or the regulations issued thereunder or the terms and conditions of permits, orders, or administrative actions issued pursuant thereto; or

''(ii) as posing an imminent threat to human health and the environment.

"(G) SCHEDULE.—A schedule containing interim goals and milestones for making reasonable progress toward the attainment of standards as set forth in subparagraph (B) established for the designated uses of receiving waters, taking into account specific watershed conditions, which may be demonstrated by one or any combination of improvements in water quality (including biological indicators), documented implementation of voluntary stormwater discharge control measures, or adoption of enforceable stormwater discharge control measures.

"(H) CERTIFICATION OF ADEQUATE AUTHORITY.—

"(i) IN GENERAL.—A certification by the Attorney General of the State or States (or the chief attorney of any State water pollution control agency that has authority under State law to make such certification) that the laws of the State or States, as the case may be, provide adequate authority to implement such management program or, if there is not such adequate authority, a list of such addi-

tional authorities as will be necessary to implement such management program.

''(ii) COMMITMENT.—A schedule for seeking, and a commitment by the State or States to seek, such additional authorities as expeditiously as practicable.

''(I) IDENTIFICATION OF FEDERAL FINANCIAL ASSISTANCE PROGRAMS.—An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and

objectives of the State's stormwater management program.

''(J) MONITORING.—A description of the monitoring of navigable waters or other assessment which will be carried out under the program for the purposes of monitoring and assessing the effectiveness of the program, including the attainment of interim goals and milestones.

''(K) IDENTIFICATION OF CERTAIN INCONSISTENT FEDERAL ACTIVITIES.—An identification of activities on Federal lands in the State that are inconsistent with the State management program.

''(L) IDENTIFICATION OF GOALS AND MILESTONES.—An identification of goals and milestones for progress in attaining water quality standards, including a projected date for attaining such standards as expeditiously as practicable but not later than 15 years after the date of approval of the State program for each of the waters listed pursuant to subsection (b).

''(3) UTILIZATION OF LOCAL AND PRIVATE EXPERTS.—In developing and implementing a management program under this subsection, a State shall,

to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in stormwater management.

''(4) DEVELOPMENT ON WATERSHED BASIS.—A State shall, to the maximum extent practicable, develop and implement a stormwater management program under this subsection on a watershed-by-watershed basis within such State.

''(5) REGULATIONS DEFINING SMALL BUSINESSES.—Working in conjunction with the Administrator of the Small Business Administration and the Small Business Ombudsman of the Environmental Protection Agency, the Administrator shall propose, not later than 6 months after the date of the enactment of this section, and issue, not later than 1 year after the date of such enactment, regulations to define small businesses for purposes of this section.

''(d) STORMWATER POLLUTION PREVENTION PLANS.—

''(1) IMPLEMENTATION DEADLINE.—Each stormwater pollution prevention plan required under subsection (c)(2)(C)(ii) shall be implemented not later than 180 days after the date of its development and shall be annually updated.

"(2) PLAN CONTENTS.—Each stormwater pollution prevention plan required under subsection (c)(2)(C)(ii) shall include the following components:

"(A) Establishment and appointment of a stormwater pollution prevention team.

"(B) Description of potential pollutant sources.

"(C) An annual site inspection evaluation.

"(D) An annual visual stormwater discharge inspection.

"(E) Measures and controls for reducing stormwater pollution, including, at a minimum, model management practices and measures that are flexible, technologically feasible, and economically practicable. For purposes of this paragraph, the term 'model management practices and measures' means preventive maintenance, good housekeeping, spill prevention and response, employee training, and sediment and erosion control.

"(F) Prevention of illegal discharges of nonstormwater through stormwater outfalls.

"(3) CERTIFICATION.—Each facility subject to subsection (c)(2)(C)(ii) shall certify to the State that it has implemented a stormwater pollution preven-

tion plan or a State or local equivalent and that the plan is intended to reduce possible pollutants in the facility's stormwater discharges. The certification must be signed by a responsible officer of the facility and must be affixed to the plan subject to review by the appropriate State program authority. If a facility makes such a certification, such facility shall not be subject to permit or permit application requirements, mandatory model management practices and measures, analytical monitoring, effluent limitations or other numerical standards or guidelines under subsection (c)(2)(C)(ii).

''(4) PLAN ADEQUACY.—The State stormwater management program shall set forth the basis upon which the adequacy of a plan prepared by a facility subject to subsection (c)(2)(C)(ii) will be determined. In making such determination, the State shall consider benefits to the environment, physical requirements, technological feasibility and economic costs, human health or safety, and nature of the activity at the facility or site. If, upon review of a stormwater pollution prevention plan, the State determines that the plan is inadequate, the State may require the facility to modify the plan.

''(e) ADMINISTRATIVE PROVISIONS.—

"(1) COOPERATION REQUIREMENT.—Any report required by subsection (b) and any management program and report required by subsection (c) shall be developed in cooperation with local, substate, regional, and interstate entities which are responsible for implementing stormwater management programs.

"(2) TIME PERIOD FOR SUBMISSION OF MANAGEMENT PROGRAMS.—Each management program shall be submitted to the Administrator within 30 months of the issuance by the Administrator of the final guidance under subsection (l) and every 5 years thereafter. Each program submission after the initial submission following the date of the enactment of the Clean Water Amendments of 1995 shall include a demonstration of reasonable further progress toward the goal of attaining water quality standards as set forth in subsection (c)(2) established for designated uses of receiving waters taking into account specific watershed conditions by not later than the date referred to in subsection (b)(2)(B), including a documentation of the degree to which the State has achieved the interim goals and milestones contained in the previous program submission. Such dem-

onstration shall take into account the adequacy of Federal funding under this section.

''(3) TRANSITION.—

''(A) IN GENERAL.—Permits, including group and general permits, issued pursuant to section 402(p), as in effect on the day before the date of the enactment of this section, shall remain in effect until the effective date of a State stormwater management program under this section. Stormwater dischargers shall continue to implement any stormwater management practices and measures required under such permits until such practices and measures are modified pursuant to this subparagraph or pursuant to a State stormwater management program. Prior to the effective date of a State stormwater management program, stormwater dischargers may submit for approval proposed revised stormwater management practices and measures to the State, in the case of a State with an approved program under section 402, or the Administrator. Upon notice of approval by the State or the Administrator, the stormwater discharger shall implement the revised stormwater management practices and

measures which, for discharges subject to subsection (c)(2)(C)(i), (c)(2)(D), or (c)(2)(E), may be voluntary pollution prevention activities. A stormwater discharger operating under a permit continued in effect under this subparagraph shall not be subject to citizens suits under section 505.

''(B) NEW FACILITIES.—A new nonmunicipal source of stormwater discharge subject to a group or general permit continued in effect under subparagraph (A) shall notify the State or the Administrator, as appropriate, of the source's intent to be covered by and shall continue to comply with such permit. Until the effective date of a State stormwater management program under this section, the State may impose enforceable stormwater management measures and practices on a new nonmunicipal source of stormwater discharge not subject to such a permit if the State finds that the stormwater discharge is likely to pose an imminent threat to human health and the environment or to pose significant impairment of water quality standards.

"(C) SPECIAL RULE.—Industrial facilities included in a Part 1 group stormwater permit application approved by the Administrator pursuant to section 122.26(c)(2) of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this section, may, in lieu of continued operation under existing permits, certify to the State or the Administrator, as appropriate, that such facilities are implementing a stormwater pollution prevention plan consistent with subsection (d). Upon such certification, the facility will no longer be subject to such permit.

"(D) PRE-1987 PERMITS AND EFFLUENT GUIDELINES.—Notwithstanding the repeal of section 402(p) by the Clean Water Amendments Act of 1995 or any other amendment made to section 402 on or before the date of the enactment of such Act, a stormwater discharge with respect to which a permit has been issued under section 402 before February 4, 1987, or with respect to which an effluent guideline has been issued before February 4, 1987 shall not be subject to the provisions of this section.

"(E) ANTIBACKSLIDING.—Section 402(o) shall not apply to any activity carried out in accordance with this paragraph.

"(f) APPROVAL OR DISAPPROVAL OF REPORTS OR MANAGEMENT PROGRAMS.—

"(1) DEADLINE.—Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or revised report or management program under this section, the Administrator shall either approve or disapprove such report or management program, as the case may be. The Administrator may approve a portion of a management program under this subsection. If the Administrator does not disapprove a report, management program, or portion of a management program in such 180-day period, such report, management program, or portion shall be deemed approved for purposes of this section.

"(2) PROCEDURE FOR DISAPPROVAL.—If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that—

"(A) the proposed management program or any portion thereof does not meet the re-

quirements of subsection (c) of this section or is not likely to satisfy, in whole or in part, the goals and requirements of this Act;

''(B) adequate authority does not exist, or adequate resources are not available, to implement such program or portion; or

''(C) the practices and measures proposed in such program or portion will not result in reasonable progress toward the goal of attainment of applicable water quality standards as set forth in subsection (c)(2) established for designated uses of receiving waters taking into consideration specific watershed conditions as expeditiously as possible but not later than 15 years after approval of a State stormwater management program under this section;

the Administrator shall within 6 months of the receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall have an additional 6 months to submit its revised management program, and the Administrator shall approve or disapprove such revised program within 3 months of receipt.

''(3) FAILURE OF STATE TO SUBMIT REPORT.—If a Governor of a State does not submit a report

or revised report required by subsection (b) within the period specified by subsection (e)(2), the Administrator shall, within 18 months after the date on which such report is required to be submitted under subsection (b), prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (b). Upon completion of the requirement of the preceding sentence and after notice and opportunity for a comment, the Administrator shall report to Congress of the actions of the Administrator under this section.

''(4) FAILURE OF STATE TO SUBMIT MANAGEMENT PROGRAM.—

''(A) PROGRAM MANAGEMENT BY ADMINISTRATOR.—Subject to paragraph (5), if a State fails to submit a management program or revised management program under subsection (c) or the Administrator does not approve such management program, the Administrator shall prepare and implement a management program for controlling pollution added from stormwater discharges to the navigable waters within the State and improving the quality of such waters in accordance with subsection (c).

"(B) NOTICE AND HEARING.—If the Administrator intends to disapprove a program submitted by a State the Administrator shall first notify the Governor of the State, in writing, of the modifications necessary to meet the requirements of this section. The Administrator shall provide adequate public notice and an opportunity for a public hearing for all interested parties.

"(C) STATE REVISION OF ITS PROGRAM.—If, after taking into account the level of funding actually provided as compared with the level authorized, the Administrator determines that a State has failed to demonstrate reasonable further progress toward the attainment of water quality standards as required, the State shall revise its program within 12 months of that determination in a manner sufficient to achieve attainment of applicable water quality standards by the deadline established by this section. If a State fails to make such a program revision or the Administrator does not approve such a revision, the Administrator shall prepare and implement a stormwater management program for the State.

"(5) LOCAL MANAGEMENT PROGRAMS; TECHNICAL ASSISTANCE.—If a State fails to submit a management program under subsection (c) or the Administrator does not approve such a management program, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a management program which is described in subsection (c) and can be approved pursuant to this subsection. After development of such management program, such agency or organization shall submit such management program to the Administrator for approval.

"(g) INTERSTATE MANAGEMENT CONFERENCE.—

"(1) CONVENING OF CONFERENCE; NOTIFICATION; PURPOSE.—

"(A) CONVENING OF CONFERENCE.—If any portion of the navigable waters in any State which is implementing a management program approved under this section is not

meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of pollution from stormwater in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute significant pollution resulting from stormwater to such portion.

''(B) NOTIFICATION.—If, on the basis of information available, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of significant pollution from stormwater in another State, the Administrator shall notify such States.

''(C) TIME LIMIT.—The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification under subparagraph (B), whether or not the State which is not meeting such standards requests such conference.

"(D) PURPOSE.—The purpose of the conference shall be to develop an agreement among the States to reduce the level of pollution resulting from stormwater in the portion of the navigable waters and to improve the water quality of such portion.

"(E) PROTECTION OF WATER RIGHTS.—Nothing in the agreement shall supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws.

"(F) LIMITATIONS.—This subsection shall not apply to any pollution which is subject to the Colorado River Basin Salinity Control Act. The requirement that the Administrator convene a management conference shall not be subject to the provisions of section 505 of this Act.

"(2) STATE MANAGEMENT PROGRAM REQUIREMENT.—To the extent that the States reach agreement through such conference, the management programs of the States which are parties to such agreements and which contribute significant pollution to the navigable waters or portions thereof not meeting applicable water quality standards or goals and requirements of this Act will be revised to reflect such

agreement. Such management programs shall be consistent with Federal and State law.

''(h) GRANTS FOR STORMWATER RESEARCH.—

''(1) IN GENERAL.—To determine the most cost-effective and technologically feasible means of improving the quality of the navigable waters and to develop the criteria required pursuant to subsection (i), the Administrator shall establish an initiative through which the Administrator shall fund State and local demonstration programs and research to—

''(A) identify adverse impacts of stormwater discharges on receiving waters;

''(B) identify the pollutants in stormwater which cause impact; and

''(C) test innovative approaches to address the impacts of source controls and model management practices and measures for runoff from municipal storm sewers.

Persons conducting demonstration programs and research funded under this subsection shall also take into account the physical nature of episodic stormwater flows, the varying pollutants in stormwater, the actual risk the flows pose to the designated beneficial uses, and the ability of natural ecosystems to accept temporary stormwater events.

"(2) AWARD OF FUNDS.—The Administrator shall award the demonstration and research program funds taking into account regional and population variations.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $20,000,000 per fiscal year for fiscal years 1996 through 2000. Such sums shall remain available until expended.

"(4) INADEQUATE FUNDING.—For each fiscal year beginning after the date of the enactment of this subsection for which the total amounts appropriated to carry out this subsection are less than the total amounts authorized to be appropriated pursuant to this subsection, any deadlines established under subsection (c)(2)(L) for compliance with water quality standards shall be postponed by 1 year.

"(i) COLLECTION OF INFORMATION.—The Administrator shall collect and make available, through publications and other appropriate means, information pertaining to model management practices and measures and implementation methods, including, but not limited to—

"(1) information concerning the costs and relative efficiencies of model management practices and

measures for reducing pollution from stormwater discharges; and

''(2) available data concerning the relationship between water quality and implementation of various management practices to control pollution from stormwater discharges.

''(j) REPORTS OF ADMINISTRATOR.—

''(1) BIENNIAL REPORTS.—Not later than January 1, 1998, and biennially thereafter, the Administrator shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from stormwater discharges and improving the quality of such waters.

''(2) CONTENTS.—Each report submitted under paragraph (1), at a minimum shall—

''(A) describe the management programs being implemented by the States by types of affected navigable waters, categories and subcategories of stormwater discharges, and types of measures being implemented;

''(B) describe the experiences of the States in adhering to schedules and implementing the measures under subsection (c);

''(C) describe the amount and purpose of grants awarded pursuant to subsection (h);

''(D) identify, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the navigable waters;

''(E) indicate what further actions need to be taken to attain and maintain in those navigable waters (i) applicable water quality standards, and (ii) the goals and requirements of this Act;

''(F) include recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from stormwater; and

''(G) identify the activities and programs of departments, agencies, and instrumentalities of the United States that are inconsistent with the stormwater management programs implemented by the States under this section and recommended modifications so that such activities and programs are consistent with and as-

sist the States in implementation of such management programs.

''(k) GUIDANCE ON MODEL MANAGEMENT PRACTICES AND MEASURES.—

''(1) IN GENERAL.—The Administrator, in consultation with appropriate Federal, State, and local departments and agencies, and after providing notice and opportunity for public comment, shall publish guidance to identify model management practices and measures which may be undertaken, at the discretion of the State or appropriate entity, under a management program established pursuant to this section. In preparing such guidance, the Administrator shall consider integration of a stormwater management program of a State with, and the relationship of such program to, the nonpoint source management program of the State under section 319.

''(2) PUBLICATION.—The Administrator shall publish proposed guidance under this subsection not later than 6 months after the date of the enactment of this subsection and shall publish final guidance under this subsection not later than 18 months after such date of enactment. The Administrator shall periodically review and revise the final guidance upon

adequate notice and opportunity for public comment at least once every 3 years after its publication.

''(3) MODEL MANAGEMENT PRACTICES AND MEASURES DEFINED.—For the purposes of this subsection and section 304(a)(13), the term ''model management practices and measures'' means economically achievable measures for the control of pollutants from stormwater discharges which reflect the most cost-effective degree of pollutant reduction achievable through the application of the best available practices, technologies, processes, siting criteria, operating methods, or other alternatives.

''(l) ENFORCEMENT WITH RESPECT TO STORMWATER DISCHARGERS VIOLATING STATE MANAGEMENT PROGRAMS.—Stormwater dischargers that do not comply with State management program requirements under subsection (c) are subject to applicable enforcement actions under sections 309 and 505 of this Act.

''(m) ENTRY AND INSPECTION.—In order to carry out the objectives of this section, an authorized representative of a State, upon presentation of his or her credentials, shall have a right of entry to, upon, or through any property at which a stormwater discharge or records required to be maintained under the State stormwater management program are located.

"(n) LIMITATION ON DISCHARGES REGULATED UNDER WATERSHED MANAGEMENT PROGRAM.—Stormwater discharges regulated under section 321 in a manner consistent with this section shall not be subject to this section.

"(o) MINERAL EXPLORATION AND MINING SITES.—

"(1) EXPLORATION SITES.—For purposes of subsection (c)(2)(F), stormwater discharges from construction activities shall include stormwater discharges from mineral exploration activities; except that, for exploration at abandoned mined lands, the stormwater program under subsection (c)(2)(F) shall be limited to the control of pollutants added to stormwater by contact with areas disturbed by the exploration activity.

"(2) MINING SITES.—Stormwater discharges at ore mining and dressing sites shall be subject to this section. If any such discharge is commingled with mine drainage or process wastewater from mining operations, such discharge shall be treated as a discharge from a point source for purposes of this Act. Land that was previously used for mining activities for which reclamation requirements of the Surface Mining Control and Reclamation Act of 1977 have been met and a performance bond or deposit re-

quired under section 509 of such Act has been released under section 519 of such Act shall no longer be considered an ore mining and dressing site.

''(3) ABANDONED MINED LANDS.—Stormwater discharges from abandoned mined lands shall be subject to section 319; except that if the State, after notice and an opportunity for comment, finds that regulation of such stormwater discharges under this section is necessary to make reasonable further progress toward achieving water quality standards by the date referred to in subsection (c)(2)(B), such discharges shall be subject to this section.

''(4) SURFACE MINING CONTROL AND RECLAMATION ACT SITES.—Notwithstanding paragraph (3), stormwater discharges from abandoned mined lands site which are subject to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1328) shall be subject to section 319.

''(5) ACTIVE COAL MINING SITES.—Discharges comprised entirely of stormwater from an active coal mining site operating under a permit issued under the Surface Mining Control and Reclamation Act of 1977 shall be subject to section 319.

''(6) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

"(A) ABANDONED MINED LANDS.—The term 'abandoned mined lands' means lands which were used for mineral activities and abandoned or left in an inadequate reclamation status and for which there is no continuing reclamation responsibility under State or Federal laws.

"(B) PROCESS WASTE WATER.—The term 'process waste water' means any water other than stormwater which comes into contact with any raw material, intermediate product, finished product, byproduct, or waste product as part of any mineral beneficiation processes employed at the site.

"(C) MINE DRAINAGE.—The term 'mine drainage' means any water drained, pumped, or siphoned from underground mine workings or mine pits, but such term shall not include stormwater runoff from tailings dams, dikes, overburden, waste rock piles, haul roads, access roads, and ancillary facility areas.".

(b) REPEAL OF LIMITATION ON PERMIT REQUIREMENT.—Section 402(l) (33 U.S.C. 1342(l)) is repealed.

(c) REPEAL OF MUNICIPAL AND INDUSTRIAL STORMWATER DISCHARGES PROGRAM.—Section 402(p) (33 U.S.C. 1342(p)) is repealed.

(d) DEVELOPMENT OF STORMWATER CRITERIA.—Section 304(a) is further amended by adding at the end the following:

''(13) DEVELOPMENT OF STORMWATER CRITERIA.—

''(A) IN GENERAL.—To reflect the episodic character of stormwater which results in significant variances in the volume, hydraulics, hydrology, and pollutant load associated with stormwater discharges, the Administrator shall establish, as an element of the water quality standards established for the designated uses of the navigable waters, stormwater criteria which protect the navigable waters from impairment of the designated beneficial uses caused by stormwater discharges. The criteria shall be technologically and financially feasible and may include performance standards, guidelines, guidance, and model management practices and measures and treatment requirements, as appropriate, and as identified in section 322.

"(B) INFORMATION TO BE USED IN DEVELOPMENT.—The stormwater discharge criteria to be established under this paragraph—

"(i) shall be developed from—

"(I) the findings and conclusions of the demonstration programs and research conducted under section 322(h);

"(II) the findings and conclusions of the research and monitoring activities of stormwater dischargers performed in compliance with permit requirements of this Act; and

"(III) other relevant information, including information submitted to the Administrator under the industrial group permit application process in effect under section 402 of this Act on the day before the date of the enactment of this paragraph;

"(ii) shall be developed in consultation with persons with expertise in the management of stormwater (including officials of State and local government, industrial and

commercial stormwater dischargers, and public interest groups); and

''(iii) shall be established as an element of the water quality standards that are developed and implemented under this Act by not later than December 31, 2008.''.

(e) DEFINITIONS.—Section 502 (33 U.S.C. 1362) is amended—

(1) by adding at the end of paragraph (14) the following: ''The term does not include a stormwater discharge that is subject to section 322.''; and

(2) by adding at the end the following:

''(25) The term 'stormwater' means runoff from rain, snow melt, or any other precipitation-generated surface runoff.

''(26) The term 'stormwater discharge' means a discharge from any conveyance which is used for the collecting and conveying of stormwater to navigable waters and which is associated with a municipal storm sewer system or industrial, commercial, oil, gas, or mining activities or construction activities.''.

SEC. 323. RISK ASSESSMENT AND DISCLOSURE REQUIREMENTS.

Title III (33 U.S.C. 1311–1330) is further amended by adding at the end the following:

"SEC. 323. RISK ASSESSMENT AND DISCLOSURE REQUIREMENTS.

''(a) GENERAL RULE.—The Administrator or the Secretary of the Army (hereinafter in this section referred to as the 'Secretary'), as appropriate, shall develop and publish a risk assessment before issuing—

''(1) any standard, effluent limitation, water quality criterion, water quality based requirement, or other regulatory requirement under this Act (other than a permit or a purely procedural requirement); or

''(2) any guidance under this Act which, if issued as a regulatory requirement, would result in an annual increase in cost of $25,000,000 or more.

''(b) CONTENTS OF RISK ASSESSMENTS.—A risk assessment developed under subsection (a), at a minimum, shall—

''(1) identify and use all relevant and readily obtainable data and information of sufficient quality, including data and information submitted to the Agency in a timely fashion;

''(2) identify and discuss significant assumptions, inferences, or models used in the risk assessment;

''(3) measure the sensitivity of the results to the significant assumptions, inferences, or models that the risk assessment relies upon;

''(4) with respect to significant assumptions, inferences, or models that the results are sensitive to, identify and discuss—

''(A) credible alternatives and the basis for the rejection of such alternatives;

''(B) the scientific or policy basis for the selection of such assumptions, inferences, or models; and

''(C) the extent to which any such assumptions, inferences, or models have been validated or conflict with empirical data;

''(5) to the maximum extent practical, provide a description of the risk, including, at minimum, best estimates or other unbiased representation of the most plausible level of risk and a description of the specific populations or natural resources subject to the assessment;

"(6) to the maximum extent practical, provide a quantitative estimate of the uncertainty inherent in the risk assessment; and

"(7) compare the nature and extent of the risk identified in the risk assessment to other risks to human health and the environment.

"(c) RISK ASSESSMENT GUIDANCE.—Not later than 180 days after the date of the enactment of this section, and after providing notice and opportunity for public comment, the Administrator, in consultation with the Secretary, shall issue, and thereafter revise, as appropriate, guidance for conducting risk assessments under subsection (a).

"(d) MARGIN OF SAFETY.—When establishing a margin of safety for use in developing a regulatory requirement described in subsection (a)(1) or guidance described in subsection (a)(2), the Administrator or the Secretary, as appropriate, shall provide, as part of the risk assessment under subsection (a), an explicit and, to the extent practical, quantitative description of the margin of safety relative to an unbiased estimate of the risk being addressed.

"(e) DISCRETIONARY EXEMPTIONS.—The Administrator or the Secretary, as appropriate, may exempt from the requirements of this section any risk assessment pre-

pared in support of a regulatory requirement described in subsection (a)(1) which is likely to result in annual increase in cost of less than $25,000,000. Such exemptions may be made for specific risk assessments or classes of risk assessments.

''(f) GENERAL RULE ON APPLICABILITY.—The requirements of this section shall apply to any regulatory requirement described in subsection (a)(1) or guidance described in subsection (a)(2) that is issued after the last day of the 1-year period beginning on the date of the enactment of this section.

''(g) SIGNIFICANT REGULATORY ACTIONS AND GUIDANCE.—

''(1) APPLICABILITY OF REQUIREMENTS.—In addition to the regulatory requirements and guidance referred to in subsection (f), the requirements of this section shall apply to—

''(A) any standard, effluent limitation, water quality criterion, water quality based requirement, or other regulatory requirement issued under this Act during the period described in paragraph (2) which is likely to result in an annual increase in cost of $100,000,000 or more; and

"(B) any guidance issued under this Act during the period described in paragraph (2) which, if issued as a regulatory requirement, would be likely to result in annual increase in cost of $100,000,000 or more.

"(2) COVERED PERIOD.—The period described in this paragraph is the period beginning on February 15, 1995, and ending on the last day of the 1-year period beginning on the date of the enactment of this Act.

"(3) REVIEW.—Any regulatory requirement described in paragraph (1)(A) or guidance described in paragraph (1)(B) which was issued before the date of the enactment of this section shall be reviewed and, with respect to each such requirement or guidance, the Administrator or the Secretary, as appropriate, shall based on such review—

"(A) certify that the requirement or guidance meets the requirements of this section without revision; or

"(B) reissue the requirement or guidance, after providing notice and opportunity for public comment, with such revisions as may be necessary for compliance with the requirements of this section.

''(4) DEADLINE.—Any regulatory requirement described in paragraph (1)(A) or guidance described in paragraph (1)(B) for which the Administrator or the Secretary, as appropriate, does not issue a certification or revisions under paragraph (3) on or before the last day of the 18-month period beginning on the date of the enactment of this section shall cease to be effective after such last day until the date on which such certification or revisions are issued.''.

SEC. 324. BENEFIT AND COST CRITERION.

Title III (33 U.S.C. 1311–1330) is further amended by adding at the end the following:

"SEC. 324. BENEFIT AND COST CRITERION.

''(a) DECISION CRITERION.—

''(1) CERTIFICATION.—The Administrator or the Secretary of the Army (hereinafter in this section referred to as the 'Secretary'), as appropriate, shall not issue—

''(A) any standard, effluent limitation, or other regulatory requirement under this Act; or

''(B) any guidance under this Act which, if issued as a regulatory requirement, would result in an annual increase in cost of $25,000,000 or more,

unless the Administrator or the Secretary certifies that the requirement or guidance maximizes net benefits to society. Such certification shall be based on an analysis meeting the requirements of subsection (b).

''(2) EFFECT OF CRITERION.—Notwithstanding any other provision of this Act, the decision criterion of paragraph (1) shall supplement and, to the extent there is a conflict, supersede the decision criteria otherwise applicable under this Act; except that the resulting regulatory requirement or guidance shall be economically achievable.

''(3) SUBSTANTIAL EVIDENCE.—Notwithstanding any other provision of this Act, no regulation or guidance subject to this subsection shall be issued by the Administrator or the Secretary unless the requirement of paragraph (1) is met and the certification is supported by substantial evidence.

''(b) BENEFIT AND COST ANALYSIS GUIDANCE.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this section, and after providing notice and opportunity for public comment, the Administrator, in concurrence with the Administrator of the Office of Information and Regulatory Affairs, shall issue, and thereafter revise, as

appropriate, guidance for conducting benefit and cost analyses in support of making certifications required by subsection (a).

''(2) CONTENTS.—Guidance issued under paragraph (1), at a minimum, shall—

''(A) require the identification of available policy alternatives, including the alternative of not regulating and any alternatives proposed during periods for public comment;

''(B) provide methods for estimating the incremental benefits and costs associated with plausible alternatives, including the use of quantitative and qualitative measures;

''(C) require an estimate of the nature and extent of the incremental risk avoided by the standard, effluent limitation, or other regulatory requirement, including a statement that places in context the nature and magnitude of the estimated risk reduction; and

''(D) require an estimate of the total social, environmental, and economic costs of implementing the standard, effluent limitation, or other regulatory requirement.

''(c) EXEMPTIONS.—The following shall not be subject to the requirements of this section:

"(1) The issuance of a permit.

"(2) The implementation of any purely procedural requirement.

"(3) Water quality criteria established under section 304.

"(4) Water quality based standards established under section 303.

"(d) DISCRETIONARY EXEMPTIONS.—The Administrator or the Secretary, as appropriate, may exempt from this section any regulatory requirement that is likely to result in an annual increase in costs of less than $25,000,000. Such exemptions may be made for specific regulatory requirements or classes of regulatory requirements.

"(e) GENERAL RULE ON APPLICABILITY.—The requirements of this section shall apply to any regulatory requirement described in subsection (a)(1)(A) or guidance described in subsection (a)(1)(B) that is issued after the last day of the 1-year period beginning on the date of the enactment of this section.

"(f) SIGNIFICANT REGULATORY ACTIONS AND GUIDANCE.—

"(1) APPLICABILITY OF REQUIREMENTS.—In addition to the regulatory requirements and guid-

ance referred to in subsection (e), this section shall apply to—

"(A) any standard, effluent limitation, or other regulatory requirement issued under this Act during the period described in paragraph (2) which is likely to result in an annual increase in cost of $100,000,000 or more; and

"(B) any guidance issued under this Act during the period described in paragraph (2) which, if issued as a regulatory requirement, would be likely to result in annual increase in cost of $100,000,000 or more.

"(2) COVERED PERIOD.—The period described in this paragraph is the period beginning on February 15, 1995, and ending on the last day of the 1-year period beginning on the date of the enactment of this Act.

"(3) REVIEW.—Any regulatory requirement described in paragraph (1)(A) or guidance described in paragraph (1)(B) which was issued before the date of the enactment of this section shall be reviewed and, with respect to each such requirement or guidance, the Administrator or the Secretary, as appropriate, shall based on such review—

"(A) certify that the requirement or guidance meets the requirements of this section without revision; or

"(B) reissue the requirement or guidance, after providing notice and opportunity for public comment, with such revisions as may be necessary for compliance with the requirements of this section.

"(4) DEADLINE.—Any regulatory requirement described in paragraph (1)(A) or guidance described in paragraph (1)(B) for which the Administrator or the Secretary, as appropriate, does not issue a certification or revisions under paragraph (3) on or before the last day of the 18-month period beginning on the date of the enactment of this section shall cease to be effective after such last day until the date on which such certification or revisions are issued.

"(g) STUDY.—Not later than 5 years after the date of the enactment of this section, the Administrator, in consultation with the Administrator of the Office of Information and Regulatory Affairs, shall publish an analysis regarding the precision and accuracy of benefit and cost estimates prepared under this section. Such study, at a minimum, shall—

''(1) compare estimates of the benefits and costs prepared under this section to actual costs and benefits achieved after implementation of regulations or other requirements;

''(2) examine and assess alternative analytic methods for conducting benefit and cost analysis, including health-health analysis; and

''(3) make recommendations for the improvement of benefit and cost analyses conducted under this section.''.

TITLE IV—PERMITS AND LICENSES

SEC. 401. WASTE TREATMENT SYSTEMS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS.

Section 402(a) is amended by adding the following new paragraph:

''(6) CONCENTRATED ANIMAL FEEDING OPERATIONS.—For purposes of this section, waste treatment systems, including retention ponds or lagoons, used to meet the requirements of this Act for concentrated animal feeding operations, are not waters of the United States. If an existing concentrated animal feeding operation uses a natural topographic impoundment or structure on the effective date of this Act, which is not hydrologically connected to

any other waters of the United States, as a waste treatment system or wastewater retention facility, such system or facility is exempt from this Act.

SEC. 402. PERMIT REFORM.

(a) DURATION AND REOPENERS.—Section 402(b)(1) (33 U.S.C. 1342(b)(1)) is amended—

(1) in subparagraph (B) by striking ''five'' and inserting ''10'' and by striking ''and'';

(2) by inserting ''and'' after the semicolon at the end of subparagraph (D); and

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

''(E) can be modified as necessary to address a significant threat to human health and the environment;''.

(b) REVIEW OF EFFLUENT LIMITATIONS.—Section 301(d) (33 U.S.C. 1311(d)) is amended to read as follows:

''(d) REVIEW OF EFFLUENT LIMITATIONS.—Any effluent limitation required by subsection (b)(2) that is established in a permit under section 402 shall be reviewed at least every 10 years when the permit is reissued, and, if appropriate, revised.''.

(c) DISCHARGE LIMIT.—Section 402(a) (33 U.S.C. 1342(a)) is further amended by adding at the end the following:

''(7) QUANTITATION LEVEL.—

''(A) ESTABLISHMENT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall establish quantitation levels for pollutants based on the lowest level at which a pollutant can be reliably quantified on an interlaboratory basis for each test method published under section 304(h).

''(B) PERMIT LEVELS.—Whenever a limitation for a permit issued under this section is set at a level below the quantitation level established for that pollutant under subparagraph (A) for the test method specified in the permit, any measurement of the pollutant greater than the limitation but less than the quantitation level shall not be considered a violation of the permit. All measurements less than the quantitation level shall be deemed equal to zero for purposes of determining compliance with the limitation.''.

(d) DISCHARGES UNDER PERMIT APPLICATIONS.—Section 402(k) (33 U.S.C. 1342(k)) is amended—

(1) in the first sentence by striking ''except'' and inserting ''except for'';

(2) in the second sentence—

(A) by striking ''Until December 31, 1974, in'' and inserting ''In''; and

(B) by striking ''(1) section 301, 306, or 402 of this Act, or (2)'' and inserting ''section 402 of this Act or''; and

(C) by inserting before the period at the end the following: '', and provided further that if the discharge results in a violation of effluent limitations or standards promulgated under section 301, 302, 303, 304, 306, or 307 of this Act that would be applicable upon issuance of a permit such discharge shall be considered unlawful under section 301 of this Act''; and

(3) by striking the last sentence..

SEC. 403. REVIEW OF STATE PROGRAMS AND PERMITS.

(a) REVIEW OF STATE PROGRAMS.—Section 402(c) (33 U.S.C. 1342(c)) is amended by inserting before the first sentence the following: ''Upon approval of a State program under this section, the Administrator shall review administration of the program by the State once every 3 years.''.

(b) REVIEW OF STATE PERMITS.—Section 402(d)(2) (33 U.S.C. 1342(d)(2)) is amended—

(1) in the first sentence by striking ''as being outside the guidelines and requirements of this Act''

and inserting ''as presenting a substantial risk to human health and the environment''; and

(2) in the second sentence by striking ''and the effluent limitations'' and all that follows before the period.

(c) COURT PROCEEDINGS TO PROHIBIT INTRODUCTION OF POLLUTANTS INTO TREATMENT WORKS.—Section 402(h) (33 U.S.C. 1342(h)) is amended by inserting after ''approved or where'' the following: ''the discharge involves a significant source of pollutants to the waters of the United States and''.

SEC. 404. STATISTICAL NONCOMPLIANCE.

(a) NUMBER OF EXCURSIONS.—Section 402(k) (33 U.S.C. 1342(k)) is amended by inserting after the first sentence the following: ''In any enforcement action or citizen suit under section 309 or 505 of this Act or applicable State law alleging noncompliance with a technology-based effluent limitation established pursuant to section 301, a permittee shall have an affirmative defense to such alleged noncompliance if the permittee demonstrates through reference to information contained in the applicable rulemaking record that the number of excursions from the technology-based effluent limitation are no greater, on an annual basis, than the number of excursions expected from the technology on which the limit is based and that the

discharges do not violate an applicable water-quality based limitation or standard.''.

(b) PRETREATMENT STANDARDS.—Section 307(d) (33 U.S.C. 1317(d)) is amended by adding at the end the following: ''In any enforcement action or citizen suit under section 309 or 505 of this Act or applicable State law alleging noncompliance with a categorical pretreatment standard or local pretreatment limit established pursuant to this section, a person who demonstrates through reference to information contained in the applicable rulemaking record—

''(1) that the number of excursions from the categorical pretreatment standard or local pretreatment limit are no greater, on an annual basis, than the number of excursions expected from the technology on which the pretreatment standard or local pretreatment limit is based, and

''(2) that the introduction of pollutants into a publicly owned treatment works does not cause interference with such works or cause a violation by such works of an applicable water-quality based limitation or standard,

shall have an affirmative defense to such alleged noncompliance''.

SEC. 405. ANTI-BACKSLIDING REQUIREMENTS.

(a) DISCHARGE VOLUME.—Section 402(o)(2) (33 U.S.C. 1342(o)(2)) is amended in the first sentence by inserting ''the concentration or loading of'' after ''applicable to''.

(b) NONAPPLICABILITY TO POTWS.—Section 402(o) (33 U.S.C. 1343(o)) is amended by adding at the end the following:

''(4) NONAPPLICABILITY TO PUBLICLY OWNED TREATMENT WORKS.—The requirements of this subsection shall not apply to permitted discharges from a publicly owned treatment works if the treatment works demonstrates to the satisfaction of the Administrator that—

''(A) the increase in pollutants is a result of conditions beyond the control of the treatment works (such as fluctuations in normal source water availabilities due to sustained drought conditions); and

''(B) effluent quality does not result in impairment of water quality standards established for the receiving waters.''.

SEC. 406. INTAKE CREDITS.

Section 402 (33 U.S.C. 1342) is further amended by inserting after subsection (k) the following:

''(l) INTAKE CREDITS.—

"(1) IN GENERAL.—Notwithstanding any provision of this Act, in any effluent limitation or other limitation imposed under the permit program established by the Administrator under this section, any State permit program approved under this section (including any program for implementation under section 118(c)(2)), any standards established under section 307(a), or any program for industrial users established under section 307(b), the Administrator, as applicable, shall or the State, as applicable, may provide credits for pollutants present in or caused by intake water such that an owner or operator of a point source is not required to remove, reduce, or treat the amount of any pollutant in an effluent below the amount of such pollutant that is present in or caused by the intake water for such facility—

"(A)(i) if the source of the intake water and the receiving waters into which the effluent is ultimately discharged are the same or are directly and proximately connected; or

"(ii) if, at the time the limitation or standard is established, the level of the pollutant in the intake water is the same as or lower than the amount of the pollutant in the receiving wa-

ters, taking into account analytical variability; and

''(B) for conventional pollutants, to the extent that the discharger demonstrates that the constituents of the conventional pollutants in the intake water are the same as or substantially similar to the constituents of the conventional pollutants in the effluent.

''(2) ALLOWANCE FOR INCIDENTAL AMOUNTS.—In determining whether the condition set forth in paragraph (1)(A)(i) is being met, the Administrator shall or the State may, as appropriate, make allowance for incidental amounts of intake water from sources other than the receiving waters.

''(3) CREDIT FOR NONQUALIFYING POLLUTANTS.—The Administrator shall or a State may provide point sources an appropriate credit for pollutants found in intake water in circumstances that do not meet the requirements of paragraph (1), including circumstances in which the source of the intake water meets the maximum contaminant levels or treatment techniques for drinking water contaminants established pursuant to the Safe Drinking Water Act for the pollutant of concern. An appro-

priate credit for pollutants found in intake water is a credit that assures that an owner or operator of a point source is not required to remove, reduce, or treat the amount of any pollutant in an effluent below the amount of such pollutant that is present in the intake water for such facility, except to the extent that the level of such pollutant in the intake water will cause adverse water quality impact that would not otherwise occur.

''(4) MONITORING.—Nothing in this section precludes the Administrator or a State from requiring monitoring of intake water, effluent, or receiving waters to assist in the implementation of this section.''.

SEC. 407. COMBINED SEWER OVERFLOWS.

Section 402 (33 U.S.C. 1342) is further amended by adding at the end the following:

''(s) COMBINED SEWER OVERFLOWS.—

''(1) REQUIREMENT FOR PERMITS.—Each permit issued pursuant to this section for a discharge from a combined storm and sanitary sewer shall conform with the combined sewer overflow control policy signed by the Administrator on April 11, 1994.

''(2) TERM OF PERMIT.—

"(A) COMPLIANCE DEADLINE.—Notwithstanding any compliance schedule under section 301(b), or any permit limitation under section 402(b)(1)(B), the Administrator (or a State with a program approved under subsection (b)) may issue a permit pursuant to this section for a discharge from a combined storm and sanitary sewer, that includes a schedule for compliance with a long-term control plan under the control policy referred to in paragraph (1), for a term not to exceed 15 years.

"(B) EXTENSION.—Notwithstanding the compliance deadline specified in subparagraph (A), the Administrator or a State with a program approved under subsection (b) shall extend, on request of an owner or operator of a combined storm and sanitary sewer and subject to subparagraph (C), the period of compliance beyond the last day of the 15-year period—

"(i) if the Administrator or the State determines that compliance by such last day is not within the economic capability of the owner or operator; and

"(ii) if the owner or operator demonstrates to the satisfaction of the Admin-

istrator or the State reasonable further progress towards compliance with a long-term control plan under the control policy referred to in paragraph (1).

''(C) LIMITATIONS ON EXTENSIONS.—

''(i) EXTENSION NOT APPROPRIATE.—Notwithstanding subparagraph (B), the Administrator or the State need not grant an extension of the compliance deadline specified in subparagraph (A) if the Administrator or the State determines that such an extension is not appropriate.

''(ii) NEW YORK-NEW JERSEY.—Prior to granting an extension under subparagraph (B) with respect to a combined sewer overflow discharge originating in the State of New York or New Jersey and affecting the other of such States, the Administrator or the State from which the discharge originates, as the case may be, shall provide written notice of the proposed extension to the other State and shall not grant the extension unless the other State approves the extension or does not dis-

approve the extension within 90 days of receiving such written notice.

''(3) SAVINGS CLAUSE.—Any consent decree or court order entered by a United States district court, or administrative order issued by the Administrator, before the date of the enactment of this subsection establishing any deadlines, schedules, or timetables, including any interim deadlines, schedules, or timetables, for the evaluation, design, or construction of treatment works for control or elimination of any discharge from a municipal combined storm and sanitary sewer system shall be modified upon motion or request by any party to such consent decree or court order, to extend to December 31, 2009, at a minimum, any such deadlines, schedules, or timetables, including any interim deadlines, schedules, or timetables as is necessary to conform to the policy referred to in paragraph (1) or otherwise achieve the objectives of this subsection. Notwithstanding the preceding sentence, the period of compliance with respect to a discharge referred to in paragraph (2)(C)(ii) may only be extended in accordance with paragraph (2)(C)(ii).''.

SEC. 408. SANITARY SEWER OVERFLOWS.

Section 402 (33 U.S.C. 1342) is further amended by adding at the end the following:

''(t) SANITARY SEWER OVERFLOWS.—

''(1) DEVELOPMENT OF POLICY.—Not later than 2 years after the date of the enactment of this subsection, the Administrator, in consultation with State and local governments and water authorities, shall develop and publish a national control policy for municipal separate sanitary sewer overflows. The national policy shall recognize and address regional and economic factors.

''(2) ISSUANCE OF PERMITS.—Each permit issued pursuant to this section for a discharge from a municipal separate sanitary sewer shall conform with the policy developed under paragraph (1).

''(3) COMPLIANCE DEADLINE.—Notwithstanding any compliance schedule under section 301(b), or any permit limitation under subsection (b)(1)(B), the Administrator or a State with a program approved under subsection (b) may issue a permit pursuant to this section for a discharge from a municipal separate sanitary sewer due to stormwater inflows or infiltration. The permit shall include at a minimum a schedule for compliance with a long-term

control plan under the policy developed under paragraph (1), for a term not to exceed 15 years.

''(4) EXTENSION.—Notwithstanding the compliance deadline specified in paragraph (3), the Administrator or a State with a program approved under subsection (b) shall extend, on request of an owner or operator of a municipal separate sanitary sewer, the period of compliance beyond the last day of such 15-year period if the Administrator or the State determines that compliance by such last day is not within the economic capability of the owner or operator, unless the Administrator or the State determines that the extension is not appropriate.

''(5) EFFECT ON OTHER ACTIONS.—Before the date of publication of the policy under paragraph (1), the Administrator or Attorney General shall not initiate any administrative or judicial civil penalty action in response to a municipal separate sanitary sewer overflow due to stormwater inflows or infiltration.

''(6) SAVINGS CLAUSE.—Any consent decree or court order entered by a United States district court, or administrative order issued by the Administrator, before the date of the enactment of this subsection establishing any deadlines, schedules, or

timetables, including any interim deadlines, schedules, or timetables, for the evaluation, design, or construction of treatment works for control or elimination of any discharge from a municipal separate sanitary sewer shall be modified upon motion or request by any party to such consent decree or court order, to extend to December 31, 2009, at a minimum, any such deadlines, schedules, or timetables, including any interim deadlines, schedules, or timetables as is necessary to conform to the policy developed under paragraph (1) or otherwise achieve the objectives of this subsection.''.

SEC. 409. ABANDONED MINES.

Section 402 (33 U.S.C. 1342) is further amended by inserting after subsection (o) the following:

''(p) PERMITS FOR REMEDIATING PARTY ON ABANDONED OR INACTIVE MINED LANDS.—

''(1) APPLICABILITY.—Subject to this subsection, including the requirements of paragraphs (2) and (3), the Administrator, with the concurrence of the concerned State or Indian tribe, may issue a permit to a remediating party under this section for discharges associated with remediation activity at abandoned or inactive mined lands which modifies any otherwise applicable requirement of sections

301(b), 302, and 403, or any subsection of this section (other than this subsection).

''(2) APPLICATION FOR A PERMIT.—A remediating party who desires to conduct remediation activities on abandoned or inactive mined lands from which there is or may be a discharge of pollutants to waters of the United States or from which there could be a significant addition of pollutants from nonpoint sources may submit an application to the Administrator. The application shall consist of a remediation plan and any other information requested by the Administrator to clarify the plan and activities.

''(3) REMEDIATION PLAN.—The remediation plan shall include (as appropriate and applicable) the following:

''(A) Identification of the remediating party, including any persons cooperating with the concerned State or Indian tribe with respect to the plan, and a certification that the applicant is a remediating party under this section.

''(B) Identification of the abandoned or inactive mined lands addressed by the plan.

''(C) Identification of the waters of the United States impacted by the abandoned or inactive mined lands.

''(D) A description of the physical conditions at the abandoned or inactive mined lands that are causing adverse water quality impacts.

''(E) A description of practices, including system design and construction plans and operation and maintenance plans, proposed to reduce, control, mitigate, or eliminate the adverse water quality impacts and a schedule for implementing such practices and, if it is an existing remediation project, a description of practices proposed to improve the project, if any.

''(F) An analysis demonstrating that the identified practices are expected to result in a water quality improvement for the identified waters.

''(G) A description of monitoring or other assessment to be undertaken to evaluate the success of the practices during and after implementation, including an assessment of baseline conditions.

''(H) A schedule for periodic reporting on progress in implementation of major elements of the plan.

''(I) A budget and identified funding to support the activities described in the plan.

''(J) Remediation goals and objectives.

''(K) Contingency plans.

''(L) A description of the applicant's legal right to enter and conduct activities.

''(M) The signature of the applicant.

''(N) Identification of the pollutant or pollutants to be addressed by the plan.

''(4) PERMITS.—

''(A) CONTENTS.—Permits issued by the Administrator pursuant to this subsection shall—

''(i) provide for compliance with and implementation of a remediation plan which, following issuance of the permit, may be modified by the applicant after providing notification to and opportunity for review by the Administrator;

''(ii) require that any modification of the plan be reflected in a modified permit;

''(iii) require that if, at any time after notice to the remediating party and opportunity for comment by the remediating party, the Administrator determines that the remediating party is not implementing the approved remediation plan in substantial compliance with its terms, the Administrator shall notify the remediating party of the determination together with a list specifying the concerns of the Administrator;

''(iv) provide that, if the identified concerns are not resolved or a compliance plan submitted within 90 days of the date of the notification, the Administrator may take action under section 309 of this Act;

''(v) provide that clauses (iii) and (iv) not apply in the case of any action under section 309 to address violations involving gross negligence (including reckless, willful, or wanton misconduct) or intentional misconduct by the remediating party or any other person;

''(vi) not require compliance with any limitation issued under sections 301(b),

302, and 403 or any requirement established by the Administrator under any subsection of this section (other than this subsection); and

''(vii) provide for termination of coverage under the permit without the remediating party being subject to enforcement under sections 309 and 505 of this Act for any remaining discharges—

''(I) after implementation of the remediation plan;

''(II) if a party obtains a permit to mine the site; or

''(III) upon a demonstration by the remediating party that the surface water quality conditions due to remediation activities at the site, taken as a whole, are equal to or superior to the surface water qualities that existed prior to initiation of remediation.

''(B) LIMITATIONS.—The Administrator shall only issue a permit under this section, consistent with the provisions of this subsection, to a remediating party for discharges associated with remediation action at abandoned or inac-

tive mined lands if the remediation plan demonstrates with reasonable certainty that the actions will result in an improvement in water quality.

''(C) PUBLIC PARTICIPATION.—The Administrator may only issue a permit or modify a permit under this section after complying with subsection (b)(3).

''(D) EFFECT OF FAILURE TO COMPLY WITH PERMIT.—Failure to comply with terms of a permit issued pursuant to this subsection shall not be deemed to be a violation of an effluent standard or limitation issued under this Act.

''(E) LIMITATIONS ON STATUTORY CONSTRUCTION.—This subsection shall not be construed—

''(i) to limit or otherwise affect the Administrator's powers under section 504; or

''(ii) to preclude actions pursuant to section 309 or 505 for any violations of sections 301(a), 302, 402, and 403 that may have existed for the abandoned or inactive mined land prior to initiation of re-

mediation covered by a permit issued under this subsection, unless such permit covers remediation activities implemented by the permit holder prior to issuance of the permit.

''(F) DEEMED APPROVAL OF COMPLIANCE PLANS.—A compliance plan submitted under subparagraph (A)(iv) shall be deemed to be approved on the 90th day following the date of such submission, unless the Administrator notifies the remediating party before such 90th day that the plan has been disapproved.

''(5) DEFINITIONS.—In this subsection the following definitions apply:

''(A) REMEDIATING PARTY.—The term 'remediating party' means—

''(i) the United States (on non-Federal lands), a State or an Indian tribe or officers, employees, or contractors thereof; and

''(ii) any person acting in cooperation with a State or Indian tribe, including a government agency that owns abandoned or inactive mined lands for the purpose of conducting remediation of the mined lands

or that is engaging in remediation activities incidental to the ownership of the lands.

Such term does not include any person who, before or following issuance of a permit under this section, directly benefited from or participated in any mining operation (including exploration) associated with the abandoned or inactive mined lands.

''(B) ABANDONED OR INACTIVE MINED LANDS.—The term 'abandoned or inactive mined lands' means lands that were formerly mined and are neither actively mined nor in temporary shutdown at the time of submission of the remediation plan and issuance of a permit under this subsection.

''(C) MINED LANDS.—The term 'mined lands' means the surface or subsurface of an area where mining operations, including exploration, extraction, processing, and beneficiation, have been conducted. Such term includes private ways and roads appurtenant to such area, land excavations, underground mine portals, adits, and surface expressions associated with underground workings, such as glory holes and

subsidence features, mining waste, smelting sites associated with other mined lands, and areas where structures, facilities, equipment, machines, tools, or other material or property which result from or have been used in the mining operation are located.

''(6) REGULATIONS.—The Administrator may issue regulations establishing more specific requirements that the Administrator determines would facilitate implementation of this subsection. Before issuance of such regulations, the Administrator may establish, on a case-by-case basis after notice and opportunity for public comment as provided by subsection (b)(3), more specific requirements that the Administrator determines would facilitate implementation of this subsection in an individual permit issued to the remediating party.''.

SEC. 410. BENEFICIAL USE OF BIOSOLIDS.

(a) REFERENCES.—Section 405(a) (33 U.S.C. 1345(a)) is amended by inserting ''(also referred to as 'biosolids')'' after ''sewage sludge'' the first place it appears.

(b) APPROVAL OF STATE PROGRAMS.—Section 405(f) (33 U.S.C. 1345(f)) is amended by adding at the end the following:

''(3) APPROVAL OF STATE PROGRAMS.—Notwithstanding any other provision of this Act, the Administrator shall approve for purposes of this subsection State programs that meet the standards for final use or disposal of sewage sludge established by the Administrator pursuant to subsection (d).''.

(c) STUDIES AND PROJECTS.—Section 405(g) (33 U.S.C. 1345(g)) is amended—

(1) in the first sentence of paragraph (1) by inserting ''building materials,'' after ''agricultural and horticultural uses,'';

(2) in paragraph (1) by adding at the end the following: ''Not later than January 1, 1997, and after providing notice and opportunity for public comment, the Administrator shall issue guidance on the beneficial use of sewage sludge.''; and

(3) in paragraph (2) by striking ''September 30, 1986,'' and inserting ''September 30, 1995,''.

SEC. 411. WASTE TREATMENT SYSTEMS DEFINED.

Title IV (33 U.S.C. 1341–1345) is further amended by adding at the end the following:

''SEC. 406. WASTE TREATMENT SYSTEMS DEFINED.

''(a) ISSUANCE OF REGULATIONS.—Not later than 1 year of the date of the enactment of this section, the Ad-

ministrator, after consultation with State officials, shall issue a regulation defining 'waste treatment systems'.

''(b) INCLUSION OF AREAS.—

''(1) AREAS WHICH MAY BE INCLUDED.—In defining the term 'waste treatment systems' under subsection (a), the Administrator may include areas used for the treatment of wastes if the Administrator determines that such inclusion will not interfere with the goals of this Act.

''(2) AREAS WHICH SHALL BE INCLUDED.—In defining the term 'waste treatment systems' under subsection (a), the Administrator shall include, at a minimum, areas used for detention, retention, treatment, settling, conveyance, or evaporation of wastewater, stormwater, or cooling water unless—

''(A) the area was created in or resulted from the impoundment or other modification of navigable waters and construction of the area commenced after the date of the enactment of this section;

''(B) on or after February 15, 1995, the owner or operator allows the area to be used by interstate or foreign travelers for recreational purposes; or

"(C) on or after February 15, 1995, the owner or operator allows the taking of fish or shellfish from the area for sale in interstate or foreign commerce.

"(c) INTERIM PERIOD.—Before the date of issuance of regulations under subsection (a), the Administrator or the State (in the case of a State with an approved permit program under section 402) shall not require a new permit under section 402 or section 404 for any discharge into any area used for detention, retention, treatment, settling, conveyance, or evaporation of wastewater, stormwater, or cooling water unless the area is an area described in subsection (b)(2)(A), (b)(2)(B), or (b)(2)(C).

"(d) SAVINGS CLAUSE.—Any area which the Administrator or the State (in the case of a State with an approved permit program under section 402) determined, before February 15, 1995, is a water of the United States and for which, pursuant to such determination, the Administrator or State issued, before February 15, 1995, a permit under section 402 for discharges into such area shall remain a water of the United States.

"(e) REGULATION OF OTHER AREAS.—With respect to areas constructed for detention, retention, treatment, settling, conveyance, or evaporation of wastewater, stormwater, or cooling water that are not waste treatment

systems as defined by the Administrator pursuant to this section and that the Administrator determines are navigable waters under this Act, the Administrator or the States, in establishing standards pursuant to section 303(c) of this Act or implementing other requirements of this Act, shall give due consideration to the uses for which such areas were designed and constructed, and need not establish standards or other requirements that will impede such uses.''.

SEC. 412. THERMAL DISCHARGES.

A municipal utility that before the date of the enactment of this section has been issued a permit under section 402 of the Federal Water Pollution Control Act for discharges into the Upper Greater Miami River, Ohio, shall not be required under such Act to construct a cooling tower or operate under a thermal management plan unless—

(1) the Administrator or the State of Ohio determines based on scientific evidence that such discharges result in harm to aquatic life; or

(2) the municipal utility has applied for and been denied a thermal discharge variance under section 316(a) of such Act.

TITLE V—GENERAL PROVISIONS

SEC. 501. CONSULTATION WITH STATES.

Section 501 (33 U.S.C. 1361) is amended by adding at the end the following new subsection:

''(g) CONSULTATION WITH STATES.—

''(1) IN GENERAL.—The Administrator shall consult with and substantially involve State governments and their representative organizations and, to the extent that they participate in the administration of this Act, tribal and local governments, in the Environmental Protection Agency's decisionmaking, priority setting, policy and guidance development, and implementation under this Act.

''(2) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to meetings held to carry out paragraph (1)—

''(A) if such meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

''(B) if such meetings are solely for the purposes of exchanging views, information, or

advice relating to the management or implementation of this Act.

''(3) IMPLEMENTING GUIDELINES.—No later than 6 months after the date of the enactment of this paragraph, the Administrator shall issue guidelines for appropriate implementation of this subsection consistent with applicable laws and regulations.''.

SEC. 502. NAVIGABLE WATERS DEFINED.

Section 502(7) (33 U.S.C. 1362(7)) is amended by adding at the end the following: ''Such term does not include 'waste treatment systems', as defined under section 406.''.

SEC. 503. CAFO DEFINITION CLARIFICATION.

Section 502(14) (33 U.S.C. 1362(14)) is further amended—

(1) by inserting ''(other than an intermittent nonproducing livestock operation such as a stockyard or a holding and sorting facility)'' after ''feeding operation''; and

(2) by adding at the end the following: ''The term does include an intermittent nonproducing livestock operation if the average number of animal units that are fed or maintained in any 90-day period exceeds the number of animal units determined

by the Administrator or the State (in the case of a State with an approved permit program under section 402) to constitute a concentrated animal feeding operation or if the operation is designated by the Administrator or State as a significant contributor of pollution.''.

SEC. 504. PUBLICLY OWNED TREATMENT WORKS DEFINED.

Section 502 (33 U.S.C. 1362) is further amended by adding at the end the following:

''(27) The term 'publicly owned treatment works' means a treatment works, as defined in section 212, located at other than an industrial facility, which is designed and constructed principally, as determined by the Administrator, to treat domestic sewage or a mixture of domestic sewage and industrial wastes of a liquid nature. In the case of such a facility that is privately owned, such term includes only those facilities that, with respect to such industrial wastes, are carrying out a pretreatment program meeting all the requirements established under section 307 and paragraphs (8) and (9) of section 402(b) for pretreatment programs (whether or not the treatment works would be required to implement a pretreatment program pursuant to such sections).''.

SEC. 505. STATE WATER QUANTITY RIGHTS.

(a) POLICY.—Section 101(g) (33 U.S.C. 1251(g)) is amended by inserting before the period at the end of the last sentence ''and in accordance with section 510(b) of this Act''.

(b) STATE AUTHORITY.—Section 510 (33 U.S.C. 1370) is amended—

(1) by striking the section heading and ''SEC. 510. Except'' and inserting the following:

''SEC. 510. STATE AUTHORITY.

''(a) IN GENERAL.—Except''; and

(2) by adding at the end the following new subsection:

''(b) WATER RIGHTS.—Nothing in this Act shall be construed to supersede, abrogate, or otherwise impair any right or authority of a State to allocate quantities of water (including boundary waters). Nothing in this Act shall be implemented, enforced, or construed to allow any officer or agency of the United States to utilize directly or indirectly the authorities established under this Act to impose any requirement not imposed by the State which would supersede, abrogate, or otherwise impair rights to the use of water resources allocated under State law, interstate water compact, or Supreme Court decree, or held by the United States for use by a State, its political subdivisions, or its citizens. No water rights arise in the United States

or any other person under the provisions of this Act. This subsection shall not be construed as limiting any State's authority under section 401 of this Act, as excusing any person from obtaining a permit under section 402 or 404 of this Act, or as excusing any obligation to comply with requirements established by a State to implement section 319.''.

SEC. 506. IMPLEMENTATION OF WATER POLLUTION LAWS WITH RESPECT TO NONPETROLEUM OIL PRODUCTS AND OIL SUBSTITUTES.

(a) DIFFERENTIATION AMONG PETROLEUM AND NONPETROLEUM PRODUCTS.—

(1) IN GENERAL.—In issuing or enforcing a regulation, an interpretation, or a guideline relating to a fat, oil, or grease under the Oil Pollution Act of 1990 or the Federal Water Pollution Control Act, the head of a Federal agency shall—

(A) differentiate between and establish separate classes for petroleum and nonpetroleum oil products and oil substitutes, including animal fats, vegetable oils, and silicone fluids; and

(B) apply different standards and reporting requirements (including reporting requirements based on quantitative amounts) to dif-

ferent classes of petroleum and nonpetroleum oil products and oil substitutes as provided in paragraph (2).

(2) CONSIDERATIONS.—In differentiating between the classes of petroleum products and nonpetroleum oil products and oil substitutes, the head of the Federal agency shall consider differences in physical, chemical, biological, and other properties, and in the environmental effects, of the classes.

(b) DEFINITIONS.—In this section, the following definitions apply:

(1) ANIMAL FAT.—The term ''animal fat'' means each type of animal fat, oil, or grease, including fat, oil, or grease from fish or a marine mammal and any fat, oil, or grease referred to in section 61(a)(2) of title 13, United States Code.

(2) VEGETABLE OIL.—The term ''vegetable oil'' means each type of vegetable oil, including vegetable oil from a seed, nut, or kernel and any vegetable oil referred to in section 61(a)(1) of title 13, United States Code.

SEC. 507. DISPUTE RESOLUTION.

(a) IN GENERAL.—Section 401 of the Federal Water Pollution Control Act does not apply with respect to the

licensing of a hydroelectric project under part I of the Federal Power Act if the relevant Federal agency makes the determination referred to in subsection (b) in accordance with the mechanism described in subsection (c).

(b) DETERMINATION.—The determination referred to in subsection (a) is a specific determination that a denial, condition, or requirement of a certification under section 401 of the Federal Water Pollution Control Act for the project is inconsistent with the purposes and requirements of part I of the Federal Power Act.

(c) MECHANISM.—The dispute resolution mechanism for purposes of subsection (a) shall be a mechanism established by the relevant Federal agency, in consultation with the Administrator and the States, for resolving any conflicts or unreasonable consequences resulting from actions taken under section 401 by a State, an interstate water pollution control agency, or the Administrator relating to the issuance of a license (or to activities under such license) for a hydroelectric project under part I of the Federal Power Act. Such mechanism shall include, at a minimum, a process whereby—

(1) the relevant Federal agency, in coordination with the State, the interstate agency or the Administrator (as the case may be) may determine whether any denial, condition, or requirement under section

401 of the Federal Water Pollution Control Act relating to the issuance of such license or to activities under such license is inconsistent with the purposes and requirements of part I of the Federal Power Act;

(2) such denial, condition, or requirement shall be presumed to be consistent with the purposes and requirements of part I of the Federal Power Act if based on temperature, turbidity, or other objective water quality criteria regulating discharges of pollutants; and

(3) any denial, condition, or requirement not based on such criteria shall be presumed to be consistent with the purposes and requirements of part I of the Federal Power Act unless the relevant Federal agency, after attempting to resolve any inconsistency, makes a specific determination under subsection (b) and publishes such determination, together with the basis for such determination, in the license or other appropriate order.

SEC. 508. NEEDS ESTIMATE.

Section 516(b)(1) (33 U.S.C. 1375(b)(1)) is amended—

(1) in the first sentence by striking ''biennially revised'' and inserting ''quadrennially revised''; and

(2) in the second sentence by striking ''February 10 of each odd-numbered year'' and inserting ''December 31, 1997, and December 31 of every 4th calendar year thereafter''.

SEC. 509. PROGRAM AUTHORIZATIONS.

(a) LIMIT ON AUTHORIZATIONS.—No funds are authorized for any fiscal year after fiscal year 2000 for carrying out the programs and activities for which funds are authorized by this Act, including amendments made by this Act.

(b) GENERAL PROGRAM AUTHORIZATIONS.—Section 517 (33 U.S.C. 1376) is amended—

(1) by striking ''and'' before ''$135,000,000''; and

(2) by inserting before the period at the end the following: '', and such sums as may be necessary for each of fiscal years 1991 through 2000''.

SEC. 510. INDIAN TRIBES.

(a) COOPERATIVE AGREEMENTS.—Section 518(d) (33 U.S.C. 1377(d)) is amended by adding at the end the following: ''In exercising the review and approval provided in this paragraph, the Administrator shall respect the terms of any cooperative agreement that addresses the authority or responsibility of a State or Indian tribe to administer the requirements of this Act within the exterior

boundaries of a Federal Indian reservation, so long as that agreement otherwise provides for the adequate administration of this Act.''.

(b) TREATMENT AS STATES.—Section 518(e) (33 U.S.C. 1377(e)) is amended—

(1) in paragraph (2)—

(A) by striking ''water resources which are'' and inserting ''water resources within the exterior boundaries of a Federal Indian reservation which are on or appurtenant to lands'';

(B) by inserting ''or'' after ''Indians,'';

(C) by striking ''member of an Indian tribe'' and inserting ''member of the reservation's governing Indian tribe'';

(D) by striking '', or otherwise within the borders of an Indian reservation''; and

(E) by striking ''and'' at the end;

(2) by striking the period at the end of paragraph (3) and inserting ''; and''; and

(3) by adding at the end the following:

''(4) the Administrator's action does not authorize the Indian tribe to regulate lands owned in whole or in part by nonmembers of the tribe or the use of water resources on or appurtentant to such lands.''.

(c) DISPUTE RESOLUTION.—Section 518 is amended—

(1) by redesignating subsection (h) as subsection (j); and

(2) by inserting after subsection (g) the following new subsection:

''(h) DISPUTE RESOLUTION.—The Administrator shall promulgate, in consultation with States and Indian tribes, regulations which provide for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian tribes located on common bodies of water. Such mechanism shall provide, in a manner consistent with the objectives of this Act, that persons who are affected by differing tribal or State water quality permit requirements have standing to utilize the dispute resolution process, and for the explicit consideration of relevant factors, including the effects of differing water quality permit requirements on upstream and downstream dischargers, economic impacts, and present and historical uses and quality of the waters subject to such standards.''.

(d) PETITIONS FOR REVIEW.—Section 518 (33 U.S.C. 1377) is amended by inserting after subsection (h) (as added by subsection (b) of this section) the following:

"(i) DISTRICT COURTS; PETITION FOR REVIEW; STANDARD OF REVIEW.—Notwithstanding the provisions of section 509, the United States district courts shall have jurisdiction over actions brought to review any determination of the Administrator under section 518. Such an action may be brought by a State or an Indian tribe and shall be filed with the court within the 90-day period beginning on the date of the determination of the Administrator is made. In any such action, the district court shall review the Administrator's determination de novo.".

(e) DEFINITIONS.—Section 518(j)(1), as redesignated by subsection (b) of this section, is amended by inserting before the semicolon at the end the following: ", and, in the State of Oklahoma, such term includes lands held in trust by the United States for the benefit of an Indian tribe or an individual member of an Indian tribe, lands which are subject to Federal restrictions against alienation, and lands which are located within a dependent Indian community, as defined in section 1151 of title 18, United States Code".

(f) RESERVATION OF FUNDS.—Section 518(c) (33 U.S.C. 1377(c)) is amended in the first sentence—

(1) by striking "beginning after September 30, 1986,";

(2) by striking ''section 205(e)'' and inserting ''section 604(a)'';

(3) by striking ''one-half of''; and

(4) by striking ''section 207'' and inserting ''sections 607 and 608''.

SEC. 511. FOOD PROCESSING AND FOOD SAFETY.

Title V (33 U.S.C. 1361–1377) is amended by redesignating section 519 as section 522 and by inserting after section 518 the following:

''SEC. 519. FOOD PROCESSING AND FOOD SAFETY.

''In developing any effluent guideline under section 304(b), pretreatment standard under section 307(b), or new source performance standard under section 306 that is applicable to the food processing industry, the Administrator shall consult with and consider the recommendations of the Food and Drug Administration, Department of Health and Human Services, Department of Agriculture, and Department of Commerce. The recommendations of such departments and agencies and a description of the Administrator's response to those recommendations shall be made part of the rulemaking record for the development of such guidelines and standards. The Administrator's response shall include an explanation with respect to food safety, including a discussion of relative risks, of any

departure from a recommendation by any such department or agency.''.

SEC. 512. AUDIT DISPUTE RESOLUTION.

Title V (33 U.S.C. 1361–1377) is further amended by inserting before section 522, as redesignated by section 511 of this Act, the following:

''SEC. 520. AUDIT DISPUTE RESOLUTION.

''(a) ESTABLISHMENT OF BOARD.—The Administrator shall establish an independent Board of Audit Appeals (hereinafter in this section referred to as the 'Board') in accordance with the requirements of this section.

''(b) DUTIES.—The Board shall have the authority to review and decide contested audit determinations related to grant and contract awards under this Act. In carrying out such duties, the Board shall consider only those regulations, guidance, policies, facts, and circumstances in effect at the time of the grant or contract award.

''(c) PRIOR ELIGIBILITY DECISIONS.—The Board shall not reverse project cost eligibility determinations that are supported by an decision document of the Environmental Protection Agency, including grant or contract approvals, plans and specifications approval forms, grant or contract payments, change order approval forms, or similar documents approving project cost eligibility, except

upon a showing that such decision was arbitrary, capricious, or an abuse of law in effect at the time of such decision.

''(d) MEMBERSHIP.—

''(1) APPOINTMENT.—The Board shall be composed of 7 members to be appointed by the Administrator not later than 90 days after the date of the enactment of this section.

''(2) TERMS.—Each member shall be appointed for a term of 3 years.

''(3) QUALIFICATIONS.—The Administrator shall appoint as members of the Board individuals who are specially qualified to serve on the Board by virtue of their expertise in grant and contracting procedures. The Administrator shall make every effort to ensure that individuals appointed as members of the Board are free from conflicts of interest in carrying out the duties of the Board.

''(e) BASIC PAY AND TRAVEL EXPENSES.—

''(1) RATES OF PAY.—Except as provided in paragraph (2), members shall each be paid at a rate of basic pay, to be determined by the Administrator, for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Board.

"(2) PROHIBITION OF COMPENSATION OF FEDERAL EMPLOYEES.—Members of the Board who are full-time officers or employees of the United States may not receive additional pay, allowances, or benefits by reason of their service on the Board.

"(3) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

"(f) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Board, the Administrator shall provide to the Board the administrative support services necessary for the Board to carry out its responsibilities under this section.

"(g) DISPUTES ELIGIBLE FOR REVIEW.—The authority of the Board under this section shall extend to any contested audit determination that on the date of the enactment of this section has yet to be formally concluded and accepted by either the grantee or the Administrator.".

SEC. 513. AMERICAN-MADE EQUIPMENT AND PRODUCTS.

Title V (33 U.S.C. 1361-1377) is further amended by inserting before section 522, as redesignated by section 511 of this Act, the following:

"SEC. 521. AMERICAN-MADE EQUIPMENT AND PRODUCTS.

''(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Act should be American-made.

''(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act, the Administrator, to the greatest extent practicable, shall provide to each recipient of the assistance a notice describing the sense of Congress expressed by subsection (a).''.

TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 601. GENERAL AUTHORITY FOR CAPITALIZATION GRANTS.

Section 601(a) (33 U.S.C. 1381(a)) is amended by striking ''(1) for construction'' and all that follows through the period and inserting ''to accomplish the purposes of this Act.''.

SEC. 602. CAPITALIZATION GRANT AGREEMENTS.

(a) REQUIREMENTS FOR CONSTRUCTION OF TREATMENT WORKS.—Section 602(b)(6) (33 U.S.C. 1382(b)(6)) is amended—

(1) by striking ''before fiscal year 1995''; and

(2) by striking ''201(b)'' and all that follows through ''218'' and inserting ''211''.

(b) COMPLIANCE WITH OTHER FEDERAL LAWS.—Section 602 (33 U.S.C. 1382) is amended by adding at the end the following:

''(c) OTHER FEDERAL LAWS.—

''(1) COMPLIANCE WITH OTHER FEDERAL LAWS.—If a State provides assistance from its water pollution control revolving fund established in accordance with this title and in accordance with a statute, rule, executive order, or program of the State which addresses the intent of any requirement or any Federal executive order or law other than this Act, as determined by the State, the State in providing such assistance shall be treated as having met the Federal requirements.

''(2) LIMITATION ON APPLICABILITY OF OTHER FEDERAL LAWS.—If a State does not meet a requirement of a Federal executive order or law other than this Act under paragraph (1), such Federal law shall only apply to Federal funds deposited in the water pollution control revolving fund established by the State in accordance with this title the first time such funds are used to provide assistance from the revolving fund.''.

(c) GUIDANCE FOR SMALL SYSTEMS.—Section 602 (33 U.S.C. 1382) is amended by adding at the end the following new subsection:

''(d) GUIDANCE FOR SMALL SYSTEMS.—

''(1) SIMPLIFIED PROCEDURES.—Not later than 1 year after the date of the enactment of this subsection, the Administrator shall assist the States in establishing simplified procedures for small systems to obtain assistance under this title.

''(2) PUBLICATION OF MANUAL.—Not later than 1 year after the date of the enactment of this subsection, and after providing notice and opportunity for public comment, the Administrator shall publish a manual to assist small systems in obtaining assistance under this title and publish in the Federal Register notice of the availability of the manual.

''(3) SMALL SYSTEM DEFINED.—For purposes of this title, the term 'small system' means a system for which a municipality or intermunicipal, interstate, or State agency seeks assistance under this title and which serves a population of 20,000 or less.''.

SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.

(a) ACTIVITIES ELIGIBLE FOR ASSISTANCE.—Section 603(c) (33 U.S.C. 1383(c)) is amended to read as follows:

''(c) ACTIVITIES ELIGIBLE FOR ASSISTANCE.—

''(1) IN GENERAL.—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance to activities which have as a principal benefit the improvement or protection of water quality of navigable waters to a municipality, intermunicipal agency, interstate agency, State agency, or other person. Such activities may include the following:

''(A) Construction of a publicly owned treatment works if the recipient of such assistance is a municipality.

''(B) Implementation of lake protection programs and projects under section 314.

''(C) Implementation of a management program under section 319.

''(D) Implementation of a conservation and management plan under section 320.

''(E) Implementation of a watershed management plan under section 321.

"(F) Implementation of a stormwater management program under section 322.

"(G) Acquisition of property rights for the restoration or protection of publicly or privately owned riparian areas.

"(H) Implementation of measures to improve the efficiency of public water use.

"(I) Development and implementation of plans by a public recipient to prevent water pollution.

"(J) Acquisition of lands necessary to meet any mitigation requirements related to construction of a publicly owned treatment works.

"(2) FUND AMOUNTS.—The water pollution control revolving fund of a State shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing financial assistance described in paragraph (1). Fees charged by a State to recipients of such assistance may be deposited in the fund for the sole purpose of financing the cost of administration of this title.".

(b) EXTENDED REPAYMENT PERIOD FOR DISADVANTAGED COMMUNITIES.—Section 603(d)(1) (33 U.S.C. 1383(d)(1)) is amended—

(1) in subparagraph (A) by inserting after ''20 years'' the following: ''or, in the case of a disadvantaged community, the lesser of 40 years or the expected life of the project to be financed with the proceeds of the loan''; and

(2) in subparagraph (B) by striking ''not later than 20 years after project completion'' and inserting ''upon the expiration of the term of the loan''.

(c) LOAN GUARANTEES FOR INNOVATIVE TECHNOLOGY.—Section 603(d)(5) (33 U.S.C. 1383(d)(5)) is amended to read as follows:

''(5) to provide loan guarantees for—

''(A) similar revolving funds established by municipalities or intermunicipal agencies; and

''(B) developing and implementing innovative technologies.''.

(d) ADMINISTRATIVE EXPENSES.—Section 603(d)(7) (33 U.S.C. 1383(d)(7)) is amended by inserting before the period at the end the following: ''or $400,000 per year or ½ percent per year of the current valuation of such fund, whichever is greater, plus the amount of any fees collected by the State for such purpose under subsection (c)(2)''.

(e) TECHNICAL AND PLANNING ASSISTANCE FOR SMALL SYSTEMS.—Section 603(d) (33 U.S.C. 1383(d)) is amended—

(1) by striking ''and'' at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting ''; and''; and

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

''(8) to provide to small systems technical and planning assistance and assistance in financial management, user fee analysis, budgeting, capital improvement planning, facility operation and maintenance, repair schedules, and other activities to improve wastewater treatment plant operations; except that such amounts shall not exceed 2 percent of all grant awards to such fund under this title.''.

(f) CONSISTENCY WITH PLANNING REQUIREMENTS.—Section 603(f) (33 U.S.C. 1383(f)) is amended—

(1) by striking ''is consistent'' and inserting ''is not inconsistent''; and

(2) by striking ''and 320'' and inserting ''320, 321, and 322''.

(g) LIMITATIONS ON CONSTRUCTION ASSISTANCE.—Section 603(g) (33 U.S.C. 1383(g)) is amended to read as follows:

''(g) LIMITATIONS ON CONSTRUCTION ASSISTANCE.—The State may provide financial assistance from its water pollution control revolving fund with respect to a project for construction of a publicly owned treatment works only if—

''(1) such project is on the State's priority list under section 216 of this Act without regard to the rank of such project on the State's priority list; and

''(2) the recipient of such assistance is a municipality in any case in which the treatment works is privately owned.''.

(h) INTEREST RATES.—Section 603 is further amended by adding at the end the following:

''(i) INTEREST RATES.—In any case in which a State makes a loan pursuant to subsection (d)(1) to a disadvantaged community, the State may charge a negative interest rate of not to exceed 2 percent to reduce the unpaid principal of the loan. The aggregate amount of all such negative interest rate loans the State makes in a fiscal year shall not exceed 20 percent of the aggregate amount of all loans made by the State from its revolving loan fund in such fiscal year.

"(j) DISADVANTAGED COMMUNITY DEFINED.—As used in this section, the term 'disadvantaged community' means the service area of a publicly owned treatment works with respect to which the average annual residential sewage treatment charges for a user of the treatment works meet affordability criteria established by the State in which the treatment works is located (after providing for public review and comment) in accordance with guidelines to be established by the Administrator, in cooperation with the States.".

(i) SALE OF TREATMENT WORKS.—Section 603 is further amended by adding at the end the following:

"(k) SALE OF TREATMENT WORKS.—

"(1) IN GENERAL.—Notwithstanding any other provisions of this Act, any State, municipality, intermunicipality, or interstate agency may transfer by sale to a qualified private sector entity all or part of a treatment works that is owned by such agency and for which it received Federal financial assistance under this Act if the transfer price will be distributed, as amounts are received, in the following order:

"(A) First reimbursement of the agency of the unadjusted dollar amount of the costs of construction of the treatment works or part

thereof plus any transaction and fix-up costs incurred by the agency with respect to the transfer less the amount of such Federal financial assistance provided with respect to such costs.

''(B) If proceeds from the transfer remain after such reimbursement, repayment of the Federal Government of the amount of such Federal financial assistance less the applicable share of accumulated depreciation on such treatment works (calculated using Internal Revenue Service accelerated depreciation schedule applicable to treatment works).

''(C) If any proceeds of such transfer remain after such reimbursement and repayment, retention of the remaining proceeds by such agency.

''(2) RELEASE OF CONDITION.—Any requirement imposed by regulation or policy for a showing that the treatment works are no longer needed to serve their original purpose shall not apply.

''(3) SELECTION OF BUYER.—A State, municipality, intermunicipality, or interstate agency exercising the authority granted by this subsection shall select a qualified private sector entity on the basis of total net cost and other appropriate criteria and

shall utilize such competitive bidding, direct negotiation, or other criteria and procedures as may be required by State law.

''(l) PRIVATE OWNERSHIP OF TREATMENT WORKS.—

''(1) REGULATORY REVIEW.—The Administrator shall review the law and any regulations, policies, and procedures of the Environmental Protection Agency affecting the construction, improvement, replacement, operation, maintenance, and transfer of ownership of current and future treatment works owned by a State, municipality, intermunicipality, or interstate agency. If permitted by law, the Administrator shall modify such regulations, policies, and procedures to eliminate any obstacles to the construction, improvement, replacement, operation, and maintenance of such treatment works by qualified private sector entities.

''(2) REPORT.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall submit to Congress a report identifying any provisions of law that must be changed in order to eliminate any obstacles referred to in paragraph (1).

''(3) DEFINITION.—For purposes of this section, the term 'qualified private sector entity' means any nongovernmental individual, group, association, business, partnership, organization, or privately or publicly held corporation that—

''(A) has sufficient experience and expertise to discharge successfully the responsibilities associated with construction, operation, and maintenance of a treatment works and to satisfy any guarantees that are agreed to in connection with a transfer of treatment works under subsection (k);

''(B) has the ability to assure protection against insolvency and interruption of services through contractual and financial guarantees; and

''(C) with respect to subsection (k), to the extent consistent with the North American Free Trade Agreement and the General Agreement on Tariffs and Trade—

''(i) is majority-owned and controlled by citizens of the United States; and

''(ii) does not receive subsidies from a foreign government.''.

SEC. 604. ALLOTMENT OF FUNDS.

(a) IN GENERAL.—Section 604(a) (33 U.S.C. 1384(a)) is amended to read as follows:

''(a) FORMULA FOR FISCAL YEARS 1996–2000.—Sums authorized to be appropriated pursuant to section 607 for each of fiscal years 1996, 1997, 1998, 1999, and 2000 shall be allotted for such year by the Administrator not later than the 10th day which begins after the date of the enactment of the Clean Water Amendments of 1995. Sums authorized for each such fiscal year shall be allotted in accordance with the following table:

"States:	**Percentage of sums authorized:**
Alabama	0.7736
Alaska	0.2500
Arizona	1.1526
Arkansas	0.3853
California	9.3957
Colorado	0.6964
Connecticut	1.3875
Delaware	0.2500
District of Columbia	0.3203
Florida	3.4696
Georgia	2.0334
Hawaii	0.2629
Idaho	0.2531
Illinois	5.6615
Indiana	3.1304
Iowa	0.6116
Kansas	0.8749
Kentucky	1.3662
Louisiana	1.0128
Maine	0.6742
Maryland	1.6701
Massachusetts	4.3755
Michigan	3.8495
Minnesota	1.3275
Mississippi	0.6406
Missouri	1.7167
Montana	0.2500
Nebraska	0.4008
Nevada	0.2500

"States:	Percentage of sums authorized:
New Hampshire	0.4791
New Jersey	4.7219
New Mexico	0.2500
New York	14.7435
North Carolina	2.5920
North Dakota	0.2500
Ohio	4.9828
Oklahoma	0.6273
Oregon	1.2483
Pennsylvania	4.2431
Rhode Island	0.4454
South Carolina	0.7480
South Dakota	0.2500
Tennessee	1.4767
Texas	4.6773
Utah	0.2937
Vermont	0.2722
Virginia	2.4794
Washington	2.2096
West Virginia	1.4346
Wisconsin	1.4261
Wyoming	0.2500
Puerto Rico	1.0866
Northern Marianas	0.0308
American Samoa	0.0908
Guam	0.0657
Palau	0.1295
Virgin Islands	0.0527.''.

(b) CONFORMING AMENDMENT.—Section 604(c)(2) is amended by striking ''title II of this Act'' and inserting ''this title''.

SEC. 605. AUTHORIZATION OF APPROPRIATIONS.

Section 607 (33 U.S.C. 1387(a)) is amended—

(1) by striking ''and'' at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting a semicolon; and

(3) by adding at the end the following:

''(6) such sums as may be necessary for fiscal year 1995;

''(7) $2,250,000,000 for fiscal year 1996;

''(8) $2,300,000,000 for fiscal year 1997;

''(9) $2,300,000,000 for fiscal year 1998;

''(10) $2,300,000,000 for fiscal year 1999; and

''(11) $2,300,000,000 for fiscal year 2000.''.

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 701. TECHNICAL AMENDMENTS.

(a) SECTION 118.—Section 118(c)(1)(A) (33 U.S.C. 1268(c)(1)(A)) is amended by striking the last comma.

(b) SECTION 120.—Section 120(d) (33 U.S.C. 1270(d)) is amended by striking ''(1)''.

(c) SECTION 204.—Section 204(a)(3) (33 U.S.C. 1284(a)(3)) is amended by striking the final period and inserting a semicolon.

(d) SECTION 205.—Section 205 (33 U.S.C. 1285) is amended—

(1) in subsection (c)(2) by striking ''and 1985'' and inserting ''1985, and 1986'';

(2) in subsection (c)(2) by striking ''through 1985'' and inserting ''through 1986'';

(3) in subsection (g)(1) by striking the period following ''4 per centum''; and

(4) in subsection (m)(1)(B) by striking ''this'' the last place it appears and inserting ''such''.

(e) SECTION 208.—Section 208 (33 U.S.C. 1288) is amended—

(1) in subsection (h)(1) by striking ''designed'' and inserting ''designated''; and

(2) in subsection (j)(1) by striking ''September 31, 1988'' and inserting ''September 30, 1988''.

(f) SECTION 301.—Section 301(j)(1)(A) (33 U.S.C. 1311(j)(1)(A)) is amended by striking ''that'' the first place it appears and inserting ''than''.

(g) SECTION 309.—Section 309(d) (33 U.S.C. 1319(d)) is amended by striking the second comma following ''Act by a State''.

(h) SECTION 311.—Section 311 (33 U.S.C. 1321) is amended—

(1) in subsection (b) by moving paragraph (12) (including subparagraphs (A), (B) and (C)) 2 ems to the right; and

(2) in subsection (h)(2) by striking ''The'' and inserting ''the''.

(i) SECTION 505.—Section 505(f) (33 U.S.C. 1365(f)) is amended by striking the last comma.

(j) SECTION 516.—Section 516 (33 U.S.C. 1375) is amended by redesignating subsection (g) as subsection (f).

(k) SECTION 518.—Section 518(f) (33 U.S.C. 1377(f)) is amended by striking ''(d)'' and inserting ''(e)''.

SEC. 702. JOHN A. BLATNIK NATIONAL FRESH WATER QUALITY RESEARCH LABORATORY.

(a) DESIGNATION.—The laboratory and research facility established pursuant to section 104(e) of the Federal Water Pollution Control Act (33 U.S.C. 1254(e)) that is located in Duluth, Minnesota, shall be known and designated as the ''John A. Blatnik National Fresh Water Quality Research Laboratory''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the laboratory and research facility referred to in subsection (a) shall be deemed to be a reference to the ''John A. Blatnik National Fresh Water Quality Research Laboratory''.

SEC. 703. WASTEWATER SERVICE FOR COLONIAS.

(a) GRANT ASSISTANCE.—The Administrator may make grants to States along the United States-Mexico border to provide assistance for planning, design, and construction of treatment works and appropriate connections to provide wastewater service to the communities along such border commonly known as ''colonias''.

(b) TREATMENT WORKS DEFINED.—For purposes of this section, the term ''treatment works'' has the meaning

such term has under section 212 of the Federal Water Pollution Control Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for making grants under subsection (a) $50,000,000 for fiscal year 1996. Such sums shall remain available until expended.

SEC. 704. SAVINGS IN MUNICIPAL DRINKING WATER COSTS.

(a) STUDY.—The Administrator of the Environmental Protection Agency, in consultation with the Director of the Office of Management and Budget, shall review, analyze, and compile information on the annual savings that municipalities realize in the construction, operation, and maintenance of drinking water facilities as a result of actions taken under the Federal Water Pollution Control Act.

(b) CONTENTS.—The study conducted under subsection (a), at a minimum, shall contain an examination of the following elements:

(1) Savings to municipalities in the construction of drinking water filtration facilities resulting from actions taken under the Federal Water Pollution Control Act.

(2) Savings to municipalities in the operation and maintenance of drinking water facilities resulting from actions taken under such Act.

(3) Savings to municipalities in health expenditures resulting from actions taken under such Act.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall transmit to Congress a report containing the results of the study conducted under subsection (a).

TITLE VIII—WETLANDS CONSERVATION AND MANAGEMENT

SEC. 801. SHORT TITLE.

This title may be cited as the ''Comprehensive Wetlands Conservation and Management Act of 1995''.

SEC. 802. FINDINGS AND STATEMENT OF PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) wetlands play an integral role in maintaining the quality of life through material contributions to our national economy, food supply, water supply and quality, flood control, and fish, wildlife, and plant resources, and thus to the health, safety, recreation and economic well-being of citizens throughout the Nation;

(2) wetlands serve important ecological and natural resource functions, such as providing essential nesting and feeding habitat for waterfowl, other wildlife, and many rare and endangered species, fish-

eries habitat, the enhancement of water quality, and natural flood control;

(3) much of the Nation's resource has sustained significant degradation, resulting in the need for effective programs to limit the loss of ecologically significant wetlands and to provide for long-term restoration and enhancement of the wetlands resource base;

(4) most of the loss of wetlands in coastal Louisiana is not attributable to human activity;

(5) because 75 percent of the Nation's wetlands in the lower 48 States are privately owned and because the majority of the Nation's population lives in or near wetlands areas, an effective wetlands conservation and management program must reflect a balanced approach that conserves and enhances important wetlands values and functions while observing private property rights, recognizing the need for essential public infrastructure, such as highways, ports, airports, pipelines, sewer systems, and public water supply systems, and providing the opportunity for sustained economic growth;

(6) while wetlands provide many varied economic and environmental benefits, they also present health risks in some instances where they act as

breeding grounds for insects that are carriers of human and animal diseases;

(7) the Federal permit program established under section 404 of the Federal Water Pollution Control Act was not originally conceived as a wetlands regulatory program and is insufficient to ensure that the Nation's wetlands resource base will be conserved and managed in a fair and environmentally sound manner; and

(8) navigational dredging plays a vital role in the Nation's economy and, while adequate safeguards for aquatic resources must be maintained, it is essential that the regulatory process be streamlined.

(b) PURPOSE.—The purpose of this title is to establish a new Federal regulatory program for certain wetlands and waters of the United States—

(1) to assert Federal regulatory jurisdiction over a broad category of specifically identified activities that result in the degradation or loss of wetlands;

(2) to provide that each Federal agency, officer, and employee exercise Federal authority under section 404 of the Federal Water Pollution Control Act to ensure that agency action under such section will

not limit the use of privately owned property so as to diminish its value;

(3) to account for variations in wetlands functions in determining the character and extent of regulation of activities occurring in wetlands areas;

(4) to provide sufficient regulatory incentives for conservation, restoration, or enhancement activities;

(5) to encourage conservation of resources on a watershed basis to the fullest extent practicable;

(6) to protect public safety and balance public and private interests in determining the conditions under which activity in wetlands areas may occur; and

(7) to streamline the regulatory mechanisms relating to navigational dredging in the Nation's waters.

SEC. 803. WETLANDS CONSERVATION AND MANAGEMENT.

Title IV (33 U.S.C. 1341 et seq.) is further amended by striking section 404 and inserting the following new section:

"SEC. 404. PERMITS FOR ACTIVITIES IN WETLANDS OR WATERS OF THE UNITED STATES.

''(a) PROHIBITED ACTIVITIES.—No person shall undertake an activity in wetlands or waters of the United

States unless such activity is undertaken pursuant to a permit issued by the Secretary or is otherwise authorized under this section.

''(b) AUTHORIZED ACTIVITIES.—

''(1) PERMITS.—The Secretary is authorized to issue permits authorizing an activity in wetlands or waters of the United States in accordance with the requirements of this section.

''(2) NONPERMIT ACTIVITIES.—An activity in wetlands or waters of the United States may be undertaken without a permit from the Secretary if that activity is authorized under subsection (e)(6) or (e)(8) or is exempt from the requirements of this section under subsection (f) or other provisions of this section.

''(c) WETLANDS CLASSIFICATION.—

''(1) REGULATIONS; APPLICATIONS.—

''(A) DEADLINE FOR ISSUANCE OF REGULATIONS.—Not later than 1 year after the date of the enactment of the Comprehensive Wetlands Conservation and Management Act of 1995, the Secretary, in consultation with the States, shall issue regulations to classify wetlands as type A, type B, or type C wetlands de-

pending on the relative ecological significance of the wetlands.

''(B) APPLICATION REQUIREMENT.—Any person seeking to undertake activities in wetlands or waters of the United States for which a permit is required under this section shall make application to the Secretary identifying the site of such activity and requesting that the Secretary determine, in accordance with paragraph (3) of this subsection, the classification of the wetlands in which such activity is proposed to occur. The applicant may also provide such additional information regarding such proposed activity as may be necessary or appropriate for purposes of determining the classification of such wetlands or whether and under what conditions the proposed activity may be permitted to occur.

''(2) DEADLINES FOR CLASSIFICATIONS.—

''(A) GENERAL RULE.—Except as provided in subparagraph (B) of this paragraph, within 90 days following the receipt of an application under paragraph (1), the Secretary shall provide notice to the applicant of the classification of the wetlands that are the subject of such ap-

plication and shall state in writing the basis for such classification. The classification of the wetlands that are the subject of the application shall be determined by the Secretary in accordance with the requirements for classification of wetlands under paragraph (3) and subsection (i).

''(B) RULE FOR ADVANCE CLASSIFICATIONS.—In the case of an application proposing activities located in wetlands that are the subject of an advance classification under subsection (h), the Secretary shall provide notice to the applicant of such classification within thirty days following the receipt of such application, and shall provide an opportunity for review of such classification under paragraph (5) and subsection (i).

''(3) CLASSIFICATION SYSTEM.—Upon application under this subsection, the Secretary shall—

''(A) classify as type A wetlands those wetlands that are of critical significance to the long-term conservation of the aquatic environment of which such wetlands are a part and which meet the following requirements:

''(i) such wetlands serve critical wetlands functions, including the provision of critical habitat for a concentration of avian, aquatic, or wetland dependent wildlife;

''(ii) such wetlands consist of or may be a portion of ten or more contiguous acres and have an inlet or outlet for relief of water flow; except that this requirement shall not operate to preclude the classification as type A wetlands lands containing prairie pothole features, playa lakes, or vernal pools if such lands otherwise meet the requirements for type A classification under this paragraph based on verifiable, objective science;

''(iii) there exists a scarcity within the watershed or aquatic environment of identified functions served by such wetlands such that the use of such wetlands for an activity in wetlands or waters of the United States would seriously jeopardize the availability of these identified wetlands functions; and

''(iv) there is unlikely to be an overriding public interest in the use of such wetlands for purposes other than conservation;

''(B) classify as type B wetlands those wetlands that provide habitat for a significant population of wetland dependent wildlife or provide other significant wetlands functions, including significant enhancement or protection of water quality or significant natural flood control; and

''(C) classify as type C wetlands all wetlands that—

''(i) serve limited wetlands functions;

''(ii) serve marginal wetlands functions but which exist in such abundance that regulation of activities in such wetlands is not necessary for conserving important wetlands functions;

''(iii) are fastlands; or

''(iv) are wetlands within industrial, commercial, or residential complexes or other intensely developed areas that do not serve significant wetlands functions as a result of such location.

"(4) REQUEST FOR DETERMINATION OF JURISDICTION.—

"(A) IN GENERAL.—A person who holds an ownership interest in property, or who has written authorization from such a person, may submit a request to the Secretary identifying the property and requesting the Secretary to make one or more of the following determinations with respect to the property:

"(i) Whether the property contains waters of the United States.

"(ii) If the determination under clause (i) is made, whether any portion of the waters meets the requirements for delineation as wetland under subsection (g).

"(iii) If the determination under clause (ii) is made, the classification of each wetland on the property under this subsection.

"(B) PROVISION OF INFORMATION.—The person shall provide such additional information as may be necessary to make each determination requested under subparagraph (A).

"(C) DETERMINATION AND NOTIFICATION BY THE SECRETARY.—Not later than 90 days

after receipt of a request under subparagraph (A), the Secretary shall—

''(i) notify the person submitting the request of each determination made by the Secretary pursuant to the request; and

''(ii) provide written documentation of each determination and the basis for each determination.

''(D) AUTHORITY TO SEEK IMMEDIATE REVIEW.—Any person authorized under this paragraph to request a jurisdictional determination may seek immediate judicial review of any such jurisdictional determination or may proceed under subsection (i).

''(5) DE NOVO DETERMINATION AFTER ADVANCE CLASSIFICATION.—Within 30 days of receipt of notice of an advance classification by the Secretary under paragraph (2)(B) of this subsection, an applicant may request the Secretary to make a de novo determination of the classification of wetlands that are the subject of such notice.

''(d) RIGHT TO COMPENSATION.—

''(1) IN GENERAL.—The Federal Government shall compensate an owner of property whose use of any portion of that property has been limited by an

agency action under this section that diminishes the fair market value of that portion by 20 percent or more. The amount of the compensation shall equal the diminution in value that resulted from the agency action. If the diminution in value of a portion of that property is greater than 50 percent, at the option of the owner, the Federal Government shall buy that portion of the property for its fair market value.

''(2) DURATION OF LIMITATION ON USE.—Property with respect to which compensation has been paid under this section shall not thereafter be used contrary to the limitation imposed by the agency action, even if that action is later rescinded or otherwise vitiated. However, if that action is later rescinded or otherwise vitiated, and the owner elects to refund the amount of the compensation, adjusted for inflation, to the Treasury of the United States, the property may be so used.

''(3) EFFECT OF STATE LAW.—If a use is a nuisance as defined by the law of a State or is already prohibited under a local zoning ordinance, no compensation shall be made under this section with respect to a limitation on that use.

''(4) EXCEPTIONS.—

"(A) PREVENTION OF HAZARD TO HEALTH OR SAFETY OR DAMAGE TO SPECIFIC PROPERTY.—No compensation shall be made under this section with respect to an agency action the primary purpose of which is to prevent an identifiable—

"(i) hazard to public health or safety; or

"(ii) damage to specific property other than the property whose use is limited.

"(B) NAVIGATION SERVITUDE.—No compensation shall be made under this section with respect to an agency action pursuant to the Federal navigation servitude, as defined by the courts of the United States, except to the extent such servitude is interpreted to apply to wetlands.

"(5) PROCEDURE.—

"(A) REQUEST OF OWNER.—An owner seeking compensation under this section shall make a written request for compensation to the agency whose agency action resulted in the limitation. No such request may be made later than 180 days after the owner receives actual notice of that agency action.

"(B) NEGOTIATIONS.—The agency may bargain with that owner to establish the amount of the compensation. If the agency and the owner agree to such an amount, the agency shall promptly pay the owner the amount agreed upon.

"(C) CHOICE OF REMEDIES.—If, not later than 180 days after the written request is made, the parties do not come to an agreement as to the right to and amount of compensation, the owner may choose to take the matter to binding arbitration or seek compensation in a civil action.

"(D) ARBITRATION.—The procedures that govern the arbitration shall, as nearly as practicable, be those established under title 9, United States Code, for arbitration proceedings to which that title applies. An award made in such arbitration shall include a reasonable attorney's fee and other arbitration costs (including appraisal fees). The agency shall promptly pay any award made to the owner.

"(E) CIVIL ACTION.—An owner who does not choose arbitration, or who does not receive prompt payment when required by this section,

may obtain appropriate relief in a civil action against the agency. An owner who prevails in a civil action under this section shall be entitled to, and the agency shall be liable for, a reasonable attorney's fee and other litigation costs (including appraisal fees). The court shall award interest on the amount of any compensation from the time of the limitation.

''(F) SOURCE OF PAYMENTS.—Any payment made under this section to an owner and any judgment obtained by an owner in a civil action under this section shall, notwithstanding any other provision of law, be made from the annual appropriation of the agency whose action occasioned the payment or judgment. If the agency action resulted from a requirement imposed by another agency, then the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency. For this purpose the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency. If insufficient funds exist for the payment or to satisfy the judgment, it shall be the duty of the

head of the agency to seek the appropriation of such funds for the next fiscal year.

''(6) LIMITATION.—Notwithstanding any other provision of law, any obligation of the United States to make any payment under this section shall be subject to the availability of appropriations.

''(7) DUTY OF NOTICE TO OWNERS.—Whenever an agency takes an agency action limiting the use of private property, the agency shall give appropriate notice to the owners of that property directly affected explaining their rights under this section and the procedures for obtaining any compensation that may be due to them under this section.

''(8) RULES OF CONSTRUCTION.—

''(A) EFFECT ON CONSTITUTIONAL RIGHT TO COMPENSATION.—Nothing in this section shall be construed to limit any right to compensation that exists under the Constitution, laws of the United States, or laws of any State.

''(B) EFFECT OF PAYMENT.—Payment of compensation under this section (other than when the property is bought by the Federal Government at the option of the owner) shall not confer any rights on the Federal Govern-

ment other than the limitation on use resulting from the agency action.

''(9) TREATMENT OF CERTAIN ACTIONS.—A diminution in value under this subsection shall apply to surface interests in lands only or water rights allocated under State law; except that—

''(A) if the Secretary determines that the exploration for or development of oil and gas or mineral interests is not compatible with limitations on use related to the surface interests in lands that have been classified as type A or type B wetlands located above such oil and gas or mineral interests (or located adjacent to such oil and gas or mineral interests where such adjacent lands are necessary to provide reasonable access to such interests), the Secretary shall notify the owner of such interests that the owner may elect to receive compensation for such interests under paragraph (1); and

''(B) the failure to provide reasonable access to oil and gas or mineral interests located beneath or adjacent to surface interests of type A or type B wetlands shall be deemed a diminution in value of such oil and gas or mineral interests.

"(10) JURISDICTION.—The arbitrator or court under paragraph (5)(D) or (5)(E) of this subsection, as the case may be, shall have jurisdiction, in the case of oil and gas or mineral interests, to require the United States to provide reasonable access in, across, or through lands that may be the subject of a diminution in value under this subsection solely for the purpose of undertaking activity necessary to determine the value of the interests diminished and to provide other equitable remedies deemed appropriate.

"(11) LIMITATIONS ON STATUTORY CONSTRUCTION.—No action under this subsection shall be construed—

"(A) to impose any obligation on any State or political subdivision thereof to compensate any person, even in the event that the Secretary has approved a land management plan under subsection (f)(2) or an individual and general permit program under subsection (l); or

"(B) to alter or supersede requirements governing use of water applicable under State law.

"(e) REQUIREMENTS APPLICABLE TO PERMITTED ACTIVITY.—

"(1) ISSUANCE OR DENIAL OF PERMITS.—Following the determination of wetlands classification pursuant to subsection (c) if applicable, and after compliance with the requirements of subsection (d) if applicable, the Secretary may issue or deny permits for authorization to undertake activities in wetlands or waters of the United States in accordance with the requirements of this subsection.

"(2) TYPE A WETLANDS.—

"(A) ANALYSIS.—The Secretary shall determine whether to issue a permit for an activity in waters of the United States classified under subsection (c) as type A wetlands based on—

"(i) a sequential analysis that seeks, to the maximum extent practicable, to—

"(I) avoid adverse impact on the wetlands;

"(II) minimize such adverse impact on wetlands functions that cannot be avoided; and

"(III) compensate for any loss of wetland functions that cannot be avoided or minimized; and

"(ii) the public interest analysis described in paragraph (3).

"(B) WATER DEPENDENT ACTIVITY.—For purposes of subparagraph (A)(i)(I), if an activity is water dependent, an alternative in an area that is not wetlands or waters of the United States shall not be presumed to be available. A water dependent activity is an activity that requires access or proximity to or siting within the wetlands or waters of the United States in question to fulfill its basic purpose.

"(C–) MITIGATION TERMS AND CONDITIONS.—Any permit issued authorizing activities in type A wetlands may contain such terms and conditions concerning mitigation (including those applicable under paragraph (3) for type B wetlands) that the Secretary deems appropriate to prevent the unacceptable loss or degradation of type A wetlands. The Secretary shall deem the mitigation requirement of this section to be met with respect to activities in type A wetlands if such activities (i) are carried out in accordance with a State-approved reclamation plan or permit which requires recontouring and revegetation following mining, and (ii) will re-

sult in overall environmental benefits being achieved.

''(3) TYPE B WETLANDS.—

''(A) GENERAL RULE.—The Secretary may issue a permit authorizing activities in type B wetlands if the Secretary finds that issuance of the permit is in the public interest, balancing the reasonably foreseeable benefits and detriments resulting from the issuance of the permit. The permit shall be subject to such terms and conditions as the Secretary finds are necessary to carry out the purposes of the Comprehensive Wetlands Conservation and Management Act of 1995. In determining whether or not to issue the permit and whether or not specific terms and conditions are necessary to avoid a significant loss of wetlands functions, the Secretary shall consider the following factors:

''(i) The quality and quantity of significant functions served by the areas to be affected.

''(ii) The opportunities to reduce impacts through cost effective design to minimize use of wetlands areas.

''(iii) The costs of mitigation requirements and the social, recreational, and economic benefits associated with the proposed activity, including local, regional, or national needs for improved or expanded infrastructure, minerals, energy, food production, or recreation.

''(iv) The ability of the permittee to mitigate wetlands loss or degradation as measured by wetlands functions.

''(v) The environmental benefit, measured by wetlands functions, that may occur through mitigation efforts, including restoring, preserving, enhancing, or creating wetlands values and functions.

''(vi) The marginal impact of the proposed activity on the watershed of which such wetlands are a part.

''(vii) Whether the impact on the wetlands is temporary or permanent.

''(B) DETERMINATION OF PROJECT PURPOSE.—In considering an application for activities on type B wetlands, there shall be a rebuttable presumption that the project purpose as defined by the applicant shall be binding upon

the Secretary. The definition of project purpose for projects sponsored by public agencies shall be binding upon the Secretary, subject to the authority of the Secretary to impose mitigation requirements to minimize impacts on wetlands values and functions, including cost effective redesign of projects on the proposed project site.

''(C) MITIGATION REQUIREMENTS.—Except as otherwise provided in this section, requirements for mitigation shall be imposed when the Secretary finds that activities undertaken under this section will result in the loss or degradation of type B wetlands functions where such loss or degradation is not a temporary or incidental impact. When determining mitigation requirements in any specific case, the Secretary shall take into consideration the type of wetlands affected, the character of the impact on wetland functions, whether any adverse effects on wetlands are of a permanent or temporary nature, and the cost effectiveness of such mitigation and shall seek to minimize the costs of such mitigation. Such mitigation requirement shall be calculated based upon the specific impact of a particular project. The Sec-

retary shall deem the mitigation requirement of this section to be met with respect to activities in type B wetlands if such activities (i) are carried out in accordance with a State-approved reclamation plan or permit which requires recontouring and revegetation following mining, and (ii) will result in overall environmental benefits being achieved.

''(D) RULES GOVERNING MITIGATION.—In accordance with subsection (j), the Secretary shall issue rules governing requirements for mitigation for activities occurring in wetlands that allow for—

''(i) minimization of impacts through project design in the proposed project site consistent with the project's purpose, provisions for compensatory mitigation, if any, and other terms and conditions necessary and appropriate in the public interest;

''(ii) preservation or donation of type A wetlands or type B wetlands (where title has not been acquired by the United States and no compensation under subsection (d) for such wetlands has been provided) as

mitigation for activities that alter or degrade wetlands;

''(iii) enhancement or restoration of degraded wetlands as compensation for wetlands lost or degraded through permitted activity;

''(iv) creation of wetlands as compensation for wetlands lost or degraded through permitted activity if conditions are imposed that have a reasonable likelihood of being successful;

''(v) compensation through contribution to a mitigation bank program established pursuant to paragraph (4);

''(vi) offsite compensatory mitigation if such mitigation contributes to the restoration, enhancement or creation of significant wetlands functions on a watershed basis and is balanced with the effects that the proposed activity will have on the specific site; except that offsite compensatory mitigation, if any, shall be required only within the State within which the proposed activity is to occur, and shall, to the extent practicable, be within the watershed within

which the proposed activity is to occur, unless otherwise consistent with a State wetlands management plan;

''(vii) contribution of in-kind value acceptable to the Secretary and otherwise authorized by law;

''(viii) in areas subject to wetlands loss, the construction of coastal protection and enhancement projects;

''(ix) contribution of resources of more than one permittee toward a single mitigation project; and

''(x) other mitigation measures, including contributions of other than in-kind value referred to in clause (vii), determined by the Secretary to be appropriate in the public interest and consistent with the requirements and purposes of this Act.

''(E) LIMITATIONS ON REQUIRING MITIGATION.—Notwithstanding the provisions of subparagraph (C), the Secretary may determine not to impose requirements for compensatory mitigation if the Secretary finds that—

''(i) the adverse impacts of a permitted activity are limited;

''(ii) the failure to impose compensatory mitigation requirements is compatible with maintaining wetlands functions;

''(iii) no practicable and reasonable means of mitigation are available;

''(iv) there is an abundance of similar significant wetlands functions and values in or near the area in which the proposed activity is to occur that will continue to serve the functions lost or degraded as a result of such activity, taking into account the impacts of such proposed activity and the cumulative impacts of similar activity in the area;

''(v) the temporary character of the impacts and the use of minimization techniques make compensatory mitigation unnecessary to protect significant wetlands values; or

''(vi) a waiver from requirements for compensatory mitigation is necessary to prevent special hardship.

''(4) MITIGATION BANKS.—

''(A) ESTABLISHMENT.—Not later than 6 months after the date of the enactment of this

subparagraph, after providing notice and opportunity for public review and comment, the Secretary shall issue regulations for the establishment, use, maintenance, and oversight of mitigation banks. The regulations shall be developed in consultation with the heads of other appropriate Federal agencies.

''(B) PROVISIONS AND REQUIREMENTS.—The regulations issued pursuant to subparagraph (A) shall ensure that each mitigation bank—

''(i) provides for the chemical, physical, and biological functions of wetlands or waters of the United States which are lost as a result of authorized adverse impacts to wetlands or other waters of the United States;

''(ii) to the extent practicable and environmentally desirable, provides in-kind replacement of lost wetlands functions and be located in, or in proximity to, the same watershed or designated geographic area as the affected wetlands or waters of the United States;

''(iii) be operated by a public or private entity which has the financial capability to meet the requirements of this paragraph, including the deposit of a performance bond or other appropriate demonstration of financial responsibility to support the long-term maintenance of the bank, fulfill responsibilities for long-term monitoring, maintenance, and protection, and provide for the long-term security of ownership interests of wetlands and uplands on which projects are conducted to protect the wetlands functions associated with the mitigation bank;

''(iv) employ consistent and scientifically sound methods to determine debits by evaluating wetlands functions, project impacts, and duration of the impact at the sites of proposed permits for authorized activities pursuant to this section and to determine credits based on wetlands functions at the site of the mitigation bank;

''(v) provide for the transfer of credits for mitigation that has been performed and for mitigation that shall be performed

within a designated time in the future, provided that financial bonds shall be posted in sufficient amount to ensure that the mitigation will be performed in the case of default;

''(vi) provide, where appropriate, for dual use of wetlands within the mitigation bank, as long as the use other than providing compensatory mitigation under this section (I) shall not interfere with the functioning of such bank for providing such mitigation, and (II) shall not adversely impact wetlands or other waters of the United States; and

''(vii) provide opportunity for public notice of and comment on proposals for the mitigation banks; except that any process utilized by a mitigation bank to obtain a permit authorizing operations under this section before the date of the enactment of the Comprehensive Wetlands Conservation and Management Act of 1995 satisfies the requirement for such public notice and comment.

"(5) PROCEDURES AND DEADLINES FOR FINAL ACTION.—

"(A) OPPORTUNITY FOR PUBLIC COMMENT.—Not later than 15 days after receipt of a complete application for a permit under this section, together with information necessary to consider such application, the Secretary shall publish notice that the application has been received and shall provide opportunity for public comment and, to the extent appropriate, opportunity for a public hearing on the issuance of the permit.

"(B) GENERAL PROCEDURES.—In the case of any application for authorization to undertake activities in wetlands or waters of the United States that are not eligible for treatment on an expedited basis pursuant to paragraph (8), final action by the Secretary shall occur within 90 days following the date such application is filed, unless—

"(i) the Secretary and the applicant agree that such final action shall occur within a longer period of time;

"(ii) the Secretary determines that an additional, specified period of time is nec-

essary to permit the Secretary to comply with other applicable Federal law; except that if the Secretary is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to prepare an environmental impact statement, with respect to the application, the final action shall occur not later than 45 days following the date such statement is filed; or

''(iii) the Secretary, within 15 days from the date such application is received, notifies the applicant that such application does not contain all information necessary to allow the Secretary to consider such application and identifies any necessary additional information, in which case, the provisions of subparagraph (C) shall apply.

''(C) SPECIAL RULE WHEN ADDITIONAL INFORMATION IS REQUIRED.—Upon the receipt of a request for additional information under subparagraph (B)(iii), the applicant shall supply such additional information and shall advise the Secretary that the application contains all requested information and is therefore complete. The Secretary may—

"(i) within 30 days of the receipt of notice of the applicant that the application is complete, determine that the application does not contain all requested additional information and, on that basis, deny the application without prejudice to resubmission; or

"(ii) within 90 days from the date that the applicant provides notification to the Secretary that the application is complete, review the application and take final action.

"(D) EFFECT OF NOT MEETING DEADLINE.—If the Secretary fails to take final action on an application under this paragraph within 90 days from the date that the applicant provides notification to the Secretary that such application is complete, a permit shall be presumed to be granted authorizing the activities proposed in such application under such terms and conditions as are stated in such completed application.

"(6) TYPE C WETLANDS.—Activities in wetlands that have been classified as type C wetlands

by the Secretary may be undertaken without authorization required under subsection (a) of this section.

''(7) STATES WITH SUBSTANTIAL CONSERVED WETLANDS.—

''(A) IN GENERAL.—With respect to type A and type B wetlands in States with substantial conserved wetlands areas, at the option of the permit applicant, the Secretary shall issue permits authorizing activities in such wetlands pursuant to this paragraph. Final action on issuance of such permits shall be in accordance with the procedures and deadlines of paragraph (5). The Secretary may include conditions or requirements for minimization of adverse impacts to wetlands functions when minimization is economically practicable. No permit to which this paragraph applies shall include conditions, requirements, or standards for mitigation to compensate for adverse impacts to wetlands or waters of the United States or conditions, requirements, or standards for avoidance of adverse impacts to wetlands or waters of the United States.

''(B) ECONOMIC BASE LANDS.—Upon application by the owner of economic base lands

in a State with substantial conserved wetlands areas, the Secretary shall issue individual and general permits to owners of such lands for activities in wetlands or waters of the United States. The Secretary shall reduce the requirements of subparagraph (A)—

''(i) to allow economic base lands to be beneficially used to create and sustain economic activity; and

''(ii) in the case of lands owned by Alaska Native entities, to reflect the social and economic needs of Alaska Natives to utilize economic base lands.

The Secretary shall consult with and provide assistance to the Alaska Natives (including Alaska Native Corporations) in promulgation and administration of policies and regulations under this section.

''(8) GENERAL PERMITS.—

''(A) GENERAL AUTHORITY.—The Secretary may issue, by rule in accordance with subsection (j), general permits on a programmatic, State, regional, or nationwide basis for any category of activities involving an activity in wetlands or waters of the United States

if the Secretary determines that such activities are similar in nature and that such activities, when performed separately and cumulatively, will not result in the significant loss of ecologically significant wetlands values and functions.

''(B) PROCEDURES.—Permits issued under this paragraph shall include procedures for expedited review of eligibility for such permits (if such review is required) and may include requirements for reporting and mitigation. To the extent that a proposed activity requires a determination by the Secretary as to the eligibility to qualify for a general permit under this subsection, such determination shall be made within 30 days of the date of submission of the application for such qualification, or the application shall be treated as being approved.

''(C) COMPENSATORY MITIGATION.—Requirements for compensatory mitigation for general permits may be imposed where necessary to offset the significant loss or degradation of significant wetlands functions where such loss or degradation is not a temporary or incidental impact. Such compensatory mitiga-

tion shall be calculated based upon the specific impact of a particular project.

''(D) GRANDFATHER OF EXISTING GENERAL PERMITS.—General permits in effect on day before the date of the enactment of the Comprehensive Wetlands Conservation and Management Act of 1995 shall remain in effect until otherwise modified by the Secretary.

''(E) STATES WITH SUBSTANTIAL CONSERVED LANDS.—Upon application by a State or local authority in a State with substantial conserved wetlands areas, the Secretary shall issue a general permit applicable to such authority for activities in wetlands or waters of the United States. No permit issued pursuant to this subparagraph shall include conditions, requirements, or standards for mitigation to compensate for adverse impacts to wetlands or waters of the United States or shall include conditions, requirements, or standards for avoidance of adverse impacts of wetlands or waters of the United States.

''(9) OTHER WATERS OF THE UNITED STATES.—The Secretary may issue a permit authorizing activities in waters of the United States (other

than those classified as type A, B, or C wetlands under this section) if the Secretary finds that issuance of the permit is in the public interest, balancing the reasonably foreseeable benefits and detriments resulting from the issuance of the permit. The permit shall be subject to such terms and conditions as the Secretary finds are necessary to carry out the purposes of the Comprehensive Wetlands Conservation and Management Act of 1995. In determining whether or not to issue the permit and whether or not specific terms and conditions are necessary to carry out such purposes, the Secretary shall consider the factors set forth in paragraph (3)(A) as they apply to nonwetlands areas and such other provisions of paragraph (3) as the Secretary determines are appropriate to apply to nonwetlands areas.

''(10) MITIGATION OF AGRICULTURAL LANDS.—Any mitigation requirement approved by the Secretary under this section for agricultural lands shall be developed in consultataion with the Secretary of Agriculture.

''(f) ACTIVITIES NOT REQUIRING PERMIT.—

''(1) IN GENERAL.—Activities undertaken in any wetlands or waters of the United States are ex-

empt from the requirements of this section and are not prohibited by or otherwise subject to regulation under this section or section 301 or 402 of this Act (except effluent standards or prohibitions under section 307 of this Act) if such activities—

''(A) result from normal farming, silviculture, aquaculture, and ranching activities and practices, including but not limited to plowing, seeding, cultivating, haying, grazing, normal maintenance activities, minor drainage, burning of vegetation in connection with such activities, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

''(B) are for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, flood control channels or other engineered flood control facilities, water control structures, water supply reservoirs (where such maintenance involves periodic water level drawdowns) which provide water predominantly to public drinking water systems, groins, riprap, breakwaters, utility distribution and transmission lines, causeways,

and bridge abutments or approaches, and transportation structures;

''(C) are for the purpose of construction or maintenance of farm, stock or aquaculture ponds, wastewater retention or management facilities (including dikes and berms and related structures) that are used by concentrated animal feeding operations or advanced treatment municipal wastewater reuse operations, or irrigation canals and ditches or the maintenance of drainage ditches;

''(D) are for the purpose of construction of temporary sedimentation basins on a construction site, or the construction of any upland dredged material disposal area, which does not include placement of fill material into the navigable waters;

''(E) are for the purpose of construction or maintenance of farm roads or forest roads, railroad lines of up to 10 miles in length, or temporary roads for moving mining equipment, access roads for utility distribution and transmission lines if such roads or railroad lines are constructed and maintained, in accordance with best management practices, to assure that flow

and circulation patterns and chemical and biological characteristics of the waters are not impaired, that the reach of the waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

''(F) are undertaken on farmed wetlands, except that any change in use of such land for the purpose of undertaking activities that are not exempt from regulation under this subsection shall be subject to the requirements of this section to the extent that such farmed wetlands are 'wetlands' under this section;

''(G) result from any activity with respect to which a State has an approved program under section 208(b)(4) of this Act which meets the requirements of subparagraphs (B) and (C) of such section;

''(H) are consistent with a State or local land management plan submitted to the Secretary and approved pursuant to paragraph (2);

''(I) are undertaken in connection with a marsh management and conservation program in a coastal parish in the State of Louisiana where such program has been approved by the

Governor of such State or the designee of the Governor;

''(J) are undertaken on lands or involve activities within a State's coastal zone which are excluded from regulation under a State coastal zone management program approved under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.);

''(K) are undertaken in incidentally created wetlands, unless such incidentally created wetlands have exhibited wetlands functions and values for more than 5 years in which case activities undertaken in such wetlands shall be subject to the requirements of this section;

''(L) are for the purpose of preserving and enhancing aviation safety or are undertaken in order to prevent an airport hazard;

''(M) result from aggregate or clay mining activities in wetlands conducted pursuant to a State or Federal permit that requires the reclamation of such affected wetlands if such reclamation will be completed within 5 years of the commencement of activities at the site and, upon completion of such reclamation, the wetlands will support wetlands functions equivalent

to the functions supported by the wetlands at the time of commencement of such activities;

''(N) are for the placement of a structural member for a pile-supported structure, such as a pier or dock, or for a linear project such as a bridge, transmission or distribution line footing, powerline structure, or elevated or other walkway;

''(O) are for the placement of a piling in waters of the United States in a circumstance that involves—

''(i) a linear project described in subparagraph (N); or

''(ii) a structure such as a pier, boathouse, wharf, marina, lighthouse, or individual house built on stilts solely to reduce the potential of flooding;

''(P) are for the clearing (including mechanized clearing) of vegetation within a right-of-way associated with the development and maintenance of a transmission or distribution line or other powerline structure or for the maintenance of water supply reservoirs which provide water predominantly to public drinking water systems;

''(Q) are undertaken in or affecting waterfilled depressions created in uplands incidental to construction activity, or are undertaken in or affecting pits excavated in uplands for the purpose of obtaining fill, sand, gravel, aggregates, or minerals, unless and until the construction or excavation operation is abandoned;

''(R) are undertaken in a State with substantial conserved wetlands areas and—

''(i) are for purposes of providing critical infrastructure, including water and sewer systems, airports, roads, communication sites, fuel storage sites, landfills, housing, hospitals, medical clinics, schools, and other community infrastructure;

''(ii) are for construction and maintenance of log transfer facilities associated with log transportation activities;

''(iii) are for construction of tailings impoundments utilized for treatment facilities (as determined by the development document) for the mining subcategory for which the tailings impoundment is constructed;

''(iv) are for construction of ice pads and ice roads and for purposes of snow storage and removal; or

''(v) result from any silvicultural activity or practice undertaken on economic base lands; or

''(S) result from the conduct of recreational hunting or shooting.

''(2) STATE OR LOCAL MANAGEMENT PLAN.—Any State or political subdivision thereof acting pursuant to State authorization may develop a land management plan with respect to lands that include identified wetlands. The State or local government agency may submit any such plan to the Secretary for review and approval. The Secretary shall, within 60 days, notify in writing the designated State or local official of approval or disapproval of any such plan. The Secretary shall approve any plan that is consistent with the purposes of this section. No person shall be entitled to judicial review of the decision of the Secretary to approve or disapprove a land management plan under this paragraph. Nothing in this paragraph shall be construed to alter, limit, or supersede the authority of a State or political subdivision thereof to establish land management plans

for purposes other than the provisions of this subsection.

''(g) RULES FOR DELINEATING WETLANDS.—

''(1) STANDARDS.—

''(A) ISSUANCE OF RULE.—The Secretary is authorized and directed to establish standards, by rule in accordance with subsection (j), that shall govern the delineation of lands as 'wetlands' for purposes of this section. Such rules shall be established after consultation with the heads of other appropriate Federal agencies and shall be binding on all Federal agencies in connection with the administration or implementation of any provision of this section. The standards for delineation of wetlands and any decision of the Secretary, the Secretary of Agriculture (in the case of agricultural lands and associated nonagricultural lands), or any other Federal officer or agency made in connection with the administration of this section shall comply with the requirements for delineation of wetlands set forth in subparagraphs (B) and (C).

''(B) EXCEPTIONS.—The standards established by rule or applied in any case for pur-

poses of this section shall ensure that lands are delineated as wetlands only if such lands are found to be 'wetlands' under section 502 of this Act; except that such standards may not—

''(i) result in the delineation of lands as wetlands unless clear evidence of wetlands hydrology, hydrophytic vegetation, and hydric soil are found to be present during the period in which such delineation is made, which delineation shall be conducted during the growing season unless otherwise requested by the applicant;

''(ii) result in the classification of vegetation as hydrophytic if such vegetation is equally adapted to dry or wet soil conditions or is more typically adapted to dry soil conditions than to wet soil conditions;

''(iii) result in the classification of lands as wetlands unless some obligate wetlands vegetation is found to be present during the period of delineation; except that if such vegetation has been removed for the purpose of evading jurisdiction

under this section, this clause shall not apply;

''(iv) result in the conclusion that wetlands hydrology is present unless water is found to be present at the surface of such lands for 21 consecutive days in the growing seasons in a majority of the years for which records are available; and

''(v) result in the classification of lands as wetlands that are temporarily or incidentally created as a result of adjacent development activity.

''(C) NORMAL CIRCUMSTANCES.—In addition to the requirements of subparagraph (B), any standards established by rule or applied to delineate wetlands for purposes of this section shall provide that 'normal circumstances' shall be determined on the basis of the factual circumstances in existence at the time a classification is made under subsection (h) or at the time of application under subsection (e), whichever is applicable, if such circumstances have not been altered by an activity prohibited under this section.

''(2) AGRICULTURAL LANDS.—

"(A) DELINEATION BY SECRETARY OF AGRICULTURE.—For purposes of this section, wetlands located on agricultural lands and associated nonagricultural lands shall be delineated solely by the Secretary of Agriculture in accordance with subtitle C of title XII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.).

"(B) EXEMPTION OF LANDS EXEMPTED UNDER FOOD SECURITY ACT.—Any area of agricultural land or any activities related to the land determined to be exempt from the requirements of subtitle C of title XII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.) shall also be exempt from the requirements of this section for such period of time as those lands are used, or a good faith effort is shown by the owner or operator to use such lands, as agricultural lands.

"(C) EFFECT OF APPEAL DETERMINATION PURSUANT TO FOOD SECURITY ACT.—Any area of agricultural land or any activities related to the land determined to be exempt pursuant to an appeal taken pursuant to subtitle C of title XII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.) shall be exempt under this

section for such period of time as those lands are used, or a good faith effort is shown by the owner or operator to use such lands, as agricultural lands.

''(D) DELINEATIONS GRANDFATHERED.—Delineations by the Secretary of Agriculture regarding wetlands on agricultural lands and associated nonagricultural lands that have become administratively final on or before the date of enactment of the Comprehensive Wetlands Conservation and Management Act of 1995 shall not be subject to further delineation unless the owner requests a new delineation by the Secretary of Agriculture.

''(h) MAPPING AND PUBLIC NOTICE REQUIREMENTS.—

''(1) PROVISION OF PUBLIC NOTICE.—Not later than 90 days after the date of the enactment of the Comprehensive Wetlands Conservation and Management Act of 1995, the Secretary shall provide the court of each county, parish, or borough in which the wetland subject to classification under subsection (c) is located, a notice for posting near the property records of the county, parish, or borough. The notice shall—

''(A) state that wetlands regulated under this section may be located in the county, parish, or borough;

''(B) provide an explanation understandable to the general public of how wetlands are delineated and classified;

''(C) describe the requirements and restrictions of the regulatory program under this section; and

''(D) provide instructions on how to obtain a delineation and classification of wetlands under this section.

''(2) PROVISION OF DELINEATION DETERMINATIONS.—On completion under this section of a delineation and classification of property that contains wetlands or a delineation of property that contains waters of the United States that are not wetlands, the Secretary of Agriculture, in the case of wetlands located on agricultural lands and associated non-agricultural lands, and the Secretary, in the case of other lands, shall—

''(A) file a copy of the delineation, including the classification of any wetland located on the property, with the records of the property in the local courthouse; and

"(B) serve a copy of the delineation determination on every owner of the property on record and any person with a recorded mortgage or lien on the property.

"(3) NOTICE OF ENFORCEMENT ACTIONS.—The Secretary shall file notice of each enforcement action under this section taken with respect to private property with the records of the property in the local courthouse.

"(4) WETLANDS IDENTIFICATION AND CLASSIFICATION PROJECT.—

"(A) IN GENERAL.—The Secretary and the Secretary of Agriculture shall undertake a project to identify and classify wetlands in the United States that are regulated under this section. The Secretaries shall complete such project not later than 10 years after the date of the enactment of the Comprehensive Wetlands Conservation and Management Act of 1995.

"(B) APPLICABILITY OF DELINEATION STANDARDS.—In conducting the project under this section, the Secretaries shall identify and classify wetlands in accordance with standards

for delineation of wetlands established by the Secretaries under subsection (g).

''(C) PUBLIC HEARINGS.—In conducting the project under this section, the Secretaries shall provide notice and an opportunity for a public hearing in each county, parish or borough of a State before completion of identification and classification of wetlands in such county, parish, or borough.

''(D) PUBLICATION.—Promptly after completion of identification and classification of wetlands in a county, parish, or borough under this section, the Secretaries shall have published information on such identification and classification in the Federal Register and in publications of wide circulation and take other steps reasonably necessary to ensure that such information is available to the public.

''(E) REPORTS.—The Secretaries shall report to Congress on implementation of the project to be conducted under this section not later than 2 years after the date of the enactment of the Comprehensive Wetlands Conservation and Management Act of 1995 and annually thereafter.

"(F) RECORDATION.—Any classification of lands as wetlands under this section shall, to the maximum extent practicable, be recorded on the property records in the county, parish, or borough in which such wetlands are located.

"(G) PERMISSION TO ENTER ONTO PRIVATE PROPERTY.—The Secretaries shall obtain written permission from the owner of private property before entering such property to conduct identification and classification of wetlands pursuant to this paragraph.

"(i) ADMINISTRATIVE APPEALS.—

"(1) REGULATIONS ESTABLISHING PROCEDURES.—Not later than 1 year after the date of the enactment of the Comprehensive Wetlands Conservation and Management Act of 1995, the Secretary shall, after providing notice and opportunity for public comment, issue regulations establishing procedures pursuant to which—

"(A) a landowner may appeal a determination of regulatory jurisdiction under this section with respect to a parcel of the landowner's property;

"(B) a landowner may appeal a wetlands classification under this section with respect to a parcel of the landowner's property;

"(C) any person may appeal a determination that the proposed activity on the landowner's property is not exempt under subsection (f);

"(D) a landowner may appeal a determination that an activity on the landowner's property does not qualify under a general permit issued under this section;

"(E) an applicant for a permit under this section may appeal a determination made pursuant to this section to deny issuance of the permit or to impose a requirement under the permit; and

"(F) a landowner or any other person required to restore or otherwise alter a parcel of property pursuant to an order issued under this section may appeal such order.

"(2) DEADLINE FOR FILING APPEAL.—An appeal brought pursuant to this subsection shall be filed not later than 30 days after the date on which the decision or action on which the appeal is based occurs.

"(3) DEADLINE FOR DECISION.—An appeal brought pursuant to this subsection shall be decided not later than 90 days after the date on which the appeal is filed.

"(4) PARTICIPATION IN APPEALS PROCESS.—Any person who participated in the public comment process concerning a decision or action that is the subject of an appeal brought pursuant to this subsection may participate in such appeal with respect to those issues raised in the person's written public comments.

"(5) DECISIONMAKER.—An appeal brought pursuant to this subsection shall be heard and decided by an appropriate and impartial official of the Federal Government, other than the official who made the determination or carried out the action that is the subject of the appeal.

"(6) STAY OF PENALTIES AND MITIGATION.—A landowner or any other person who has filed an appeal under this subsection shall not be required to pay a penalty or perform mitigation or restoration assessed under this section or section 309 until after the appeal has been decided.

"(j) ADMINISTRATIVE PROVISIONS.—

"(1) FINAL REGULATIONS FOR ISSUANCE OF PERMITS.—Not later than 1 year after the date of the enactment of the Comprehensive Wetlands Conservation and Management Act of 1995, the Secretary shall, after notice and opportunity for comment, issue (in accordance with section 553 of title 5 of the United States Code and this section) final regulations for implementation of this section. Such regulations shall, in accordance with this section, provide—

"(A) standards and procedures for the classification and delineation of wetlands and procedures for administrative review of any such classification or delineation;

"(B) standards and procedures for the review of State or local land management plans and State programs for the regulation of wetlands;

"(C) for the issuance of general permits, including programmatic, State, regional, and nationwide permits;

"(D) standards and procedures for the individual permit applications under this section;

"(E) for enforcement of this section;

''(F) guidelines for the specification of sites for the disposal of dredged or fill material for navigational dredging;

''(G) standards and procedures that, to the maximum extent practicable and economically feasible, require the creation of wetlands and other environmentally beneficial uses of dredged or fill material associated with navigational dredging; and

''(H) any other rules and regulations that the Secretary deems necessary or appropriate to implement the requirements of this section.

''(2) NAVIGATIONAL DREDGING GUIDELINES.—Guidelines developed under paragraph (1)(F) shall—

''(A) be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the oceans under section 403(c); except that, in any case in which guidelines based on such criteria alone would prohibit the specification of a disposal site, the economic impact on navigation and anchorage shall be considered; and

''(B) ensure that with respect to the issuance of permits under this section—

''(i) the least costly, environmentally acceptable disposal alternative will be selected, taking into consideration cost, existing technology, short term and long term dredging requirements, and logistics;

''(ii) a disposal site will be specified after comparing reasonably available upland, confined aquatic, beneficial use, and open water disposal alternatives on the basis of relative risk, environmental acceptability, economics, practicability, and current technological feasibility;

''(iii) a disposal site will be specified after comparing the reasonably anticipated environmental and economic benefits of undertaking the underlying project to the status quo; and

''(iv) in comparing alternatives and selection of a disposal site, management measures may be considered and utilized to limit, to the extent practicable, adverse environmental effects by employing suitable chemical, biological, or physical techniques to prevent unacceptable adverse impacts on the environment.

"(3) JUDICIAL REVIEW OF FINAL REGULATIONS.—Any judicial review of final regulations issued pursuant to this section and the Secretary's denial of any petition for the issuance, amendment, or repeal of any regulation under this section shall be in accordance with sections 701 through 706 of title 5 of the United States Code; except that a petition for review of action of the Secretary in issuing any regulation or requirement under this section or denying any petition for the issuance, amendment, or repeal of any regulation under this section may be filed only in the United States Court of Appeals for the District of Columbia, and such petition shall be filed within 90 days from the date of such issuance or denial or after such date if such petition for review is based solely on grounds arising after such ninetieth day. Action of the Secretary with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement.

"(4) INTERIM REGULATIONS.—The Secretary shall, within 90 days after the date of the enactment of the Comprehensive Wetlands Conservation and Management Act of 1995, issue interim regulations consistent with this section to take effect imme-

diately. Notice of the interim regulations shall be published in the Federal Register, and such regulations shall be binding until the issuance of final regulations pursuant to paragraph (1); except that the Secretary shall provide adequate procedures for waiver of any provisions of such interim regulations to avoid special hardship, inequity, or unfair distribution of burdens or to advance the purposes of this section.

''(5) ADMINISTRATION BY SECRETARY.—Except where otherwise expressly provided in this section, the Secretary shall administer this section. The Secretary or any other Federal officer or agency in which any function under this section is vested or delegated is authorized to perform any and all acts (including appropriate enforcement activity), and to prescribe, issue, amend, or rescind such rules or orders as such officer or agency may find necessary or appropriate with this subsection, subject to the requirements of this subsection.

''(k) ENFORCEMENT.—

''(1) COMPLIANCE ORDER.—Whenever, on the basis of reliable and substantial information and after reasonable inquiry, the Secretary finds that any person is or may be in violation of this section

or of any condition or limitation set forth in a permit issued by the Secretary under this section, the Secretary shall issue an order requiring such persons to comply with this section or with such condition or limitation.

''(2) NOTICE AND OTHER PROCEDURAL REQUIREMENTS RELATING TO ORDERS.—A copy of any order issued under this subsection shall be sent immediately by the Secretary to the Governor of the State in which the violation occurs and the Governors of other affected States. The person committing the asserted violation that results in issuance of the order shall be notified of the issuance of the order by personal service made to the appropriate person or corporate officer. The notice shall state with reasonable specificity the nature of the asserted violation and specify a time for compliance, not to exceed 30 days, which the Secretary determines is reasonable taking into account the seriousness of the asserted violation and any good faith efforts to comply with applicable requirements. If the person receiving the notice disputes the Secretary's determination, the person may file an appeal as provided in subsection (i). Within 60 days of a decision which denies an appeal, or within 150 days from the date

of notification of violation by the Secretary if no appeal is filed, the Secretary shall prosecute a civil action in accordance with paragraph (3) or rescind such order and be estopped from any further enforcement proceedings for the same asserted violation.

''(3) CIVIL ACTION ENFORCEMENT.—The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which the Secretary is authorized to issue a compliance order under paragraph (1). Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.

''(4) CIVIL PENALTIES.—Any person who violates any condition or limitation in a permit issued by the Secretary under this section and any person who violates any order issued by the Secretary under paragraph (1) shall be subject to a civil penalty not to exceed $25,000 per day for each violation com-

mencing on expiration of the compliance period if no appeal is filed or on the 30th day following the date of the denial of an appeal of such violation. The amount of the penalty imposed per day shall be in proportion to the scale or scope of the project. In determining the amount of a civil penalty, the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.

''(5) CRIMINAL PENALTIES.—If any person knowingly and willfully violates any condition or limitation in a permit issued by the Secretary under this section or knowingly and willfully violates an order issued by the Secretary under paragraph (1) and has been notified of the issuance of such order under paragraph (2) and if such violation has resulted in actual degradation of the environment, such person shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both. If a conviction of a person is for

a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or by both. An action for imposition of a criminal penalty under this paragraph may only be brought by the Attorney General.

''(l) STATE REGULATION.—

''(1) SUBMISSION OF PROPOSED STATE PROGRAM.—The Governor of any State desiring to administer its own individual or general permit program for some or all of the activities covered by this section within any geographical region within its jurisdiction may submit to the Secretary a description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the chief legal officer in the case of the State or interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program.

''(2) STATE AUTHORITIES REQUIRED FOR APPROVAL.—Not later than 1 year after the date of the receipt by the Secretary of a program and state-

ment submitted by any State under paragraph (1), the Secretary shall determine whether such State has the following authority with respect to the issuance of permits pursuant to such program—

''(A) to issue permits which—

''(i) apply, and assure compliance with, any applicable requirements of this section; and

''(ii) can be terminated or modified for cause, including—

''(I) violation of any condition of the permit;

''(II) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or

''(III) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted activity;

''(B) to issue permits which apply, and ensure compliance with, all applicable requirements of section 308 of this Act or to inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of this Act;

''(C) to ensure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

''(D) to ensure that the Secretary receives notice of each application for a permit and that, prior to any action by the State, both the applicant for the permit and the State have received from the Secretary information with respect to any advance classification applicable to wetlands that are the subject of such application;

''(E) to ensure that any State (other than the permitting State) whose waters may be affected by the issuance of a permit may submit written recommendation to the permitting State with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Secretary) in writing of its failure to so accept such recommendations together with its reasons for doing so; and

''(F) to abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.

''(3) APPROVAL; RESUBMISSION.—If, with respect to a State program submitted under paragraph (1) of this section, the Secretary determines that the State—

''(A) has the authority set forth in paragraph (2), the Secretary shall approve the program and so notify such State and suspend the issuance of permits under subsection (b) for activities with respect to which a permit may be issued pursuant to the State program; or

''(B) does not have the authority set forth in paragraph (2) of this subsection, the Secretary shall so notify such State and provide a description of the revisions or modifications necessary so that the State may resubmit the program for a determination by the Secretary under this subsection.

''(4) EFFECT OF FAILURE OF SECRETARY TO MAKE TIMELY DECISION.—If the Secretary fails to make a determination with respect to any program submitted by a State under this subsection within 1

year after the date of receipt of the program, the program shall be treated as being approved pursuant to paragraph (3)(A) and the Secretary shall so notify the State and suspend the issuance of permits under subsection (b) for activities with respect to which a permit may be issued by the State.

''(5) TRANSFER OF PENDING APPLICATIONS FOR PERMITS.—If the Secretary approves a State permit program under paragraph (3)(A) or (4), the Secretary shall transfer any applications for permits pending before the Secretary for activities with respect to which a permit may be issued pursuant to the State program to the State for appropriate action.

''(6) GENERAL PERMITS.—Upon notification from a State with a permit program approved under this subsection that such State intends to administer and enforce the terms and conditions of a general permit issued by the Secretary under subsection (e) with respect to activities in the State to which such general permit applies, the Secretary shall suspend the administration and enforcement of such general permit with respect to such activities.

''(7) REVIEW BY SECRETARY.—Every 5 years after approval of a State administered program

under paragraph (3)(A), the Secretary shall review the program to determine whether it is being administered in accordance with this section. If, on the basis of such review, the Secretary finds that a State is not administering its program in accordance with this section or if the Secretary determines based on clear and convincing evidence after a public hearing that a State is not administering its program in accordance with this section and that substantial adverse impacts to wetlands or waters of the United States are imminent, the Secretary shall notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed 90 days after the date of the receipt of such notification, the Secretary shall—

''(A) withdraw approval of the program until the Secretary determines such corrective action has been taken; and

''(B) resume the program for the issuance of permits under subsections (b) and (e) for all activities with respect to which the State was issuing permits until such time as the Secretary makes the determination described in paragraph (2) and the State again has an approved program.

"(8) TREATMENT OF EXISTING PROGRAMS.—Any State which has received approval to administer a program pursuant to this subsection before the date of the enactment of the Comprehensive Wetlands Conservation and Management Act of 1995 shall not be required to reapply for approval and shall be permitted to continue administering such program in a manner consistent with the provisions of this section. Upon receipt of a request from the Governor of such State, the Secretary, with the concurrence of the Governor, shall amend the program.

"(m) MISCELLANEOUS PROVISIONS.—

"(1) STATE AUTHORITY TO CONTROL DISCHARGES.—Nothing in this section shall preclude or deny the right of any State or interstate agency to control activities in waters within the jurisdiction of such State, including any activity of any Federal agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control such activities to the same extent that any person is subject to such requirements. This section shall not be construed as affecting or impairing the authority of the Secretary to maintain navigation.

"(2) AVAILABILITY TO PUBLIC.—A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or portion thereof shall further be available on request for the purpose of reproduction.

"(3) PUBLICATION IN FEDERAL REGISTER.—The Secretary shall have published in the Federal Register all memoranda of agreement, regulatory guidance letters, and other guidance documents of general applicability to implementation of this section at the time they are distributed to agency regional or field offices. In addition, the Secretary shall prepare, update on a biennial basis and make available to the public for purchase at cost—

"(A) an indexed publication containing all Federal regulations, general permits, memoranda of agreement, regulatory guidance letters, and other guidance documents relevant to the permitting of activities pursuant to this section; and

"(B) information to enable the general public to understand the delineation of wetlands, the permitting requirements referred to in subsection (e), wetlands restoration and enhancement, wetlands functions, available non-

regulatory programs to conserve and restore wetlands, and other matters that the Secretary considers relevant.

''(4) COMPLIANCE.—

''(A) COMPLIANCE WITH PERMIT.—Compliance with a permit issued pursuant to this section, including any activity carried out pursuant to a general permit issued under this section, shall be deemed in compliance, for purposes of sections 309 and 505, with sections 301, 307, and 403.

''(B) CRANBERRY PRODUCTION.—Activities associated with expansion, improvement, or modification of existing cranberry production operations shall be deemed in compliance, for purposes of sections 309 and 505, with section 301, if—

''(i) the activity does not result in the modification of more than 10 acres of wetlands per operator per year and the modified wetlands (other than where dikes and other necessary facilities are placed) remain as wetlands or other waters of the United States; or

"(ii) the activity is required by any State or Federal water quality program.

"(5) LIMITATION ON FEES.—Any fee charged in connection with the delineation or classification of wetlands, the submission or processing of an application for a permit authorizing an activity in wetlands or waters of the United States, or any other action taken in compliance with the requirements of this section (other than fines for violations under subsection (k)) shall not exceed the amount in effect for such fee on February 15, 1995.

"(6) BALANCED IMPLEMENTATION.—

"(A) IN GENERAL.—In implementing his or her responsibilities under the regulatory program under this section, the Secretary shall balance the objective of conserving functioning wetlands with the objective of ensuring continued economic growth, providing essential infrastructure, maintaining strong State and local tax bases, and protecting against the diminishment of the use and value of privately owned property.

"(B) MINIMIZATION OF ADVERSE EFFECTS ON PRIVATE PROPERTY.—In carrying out this section, the Secretary and the heads of all other

Federal agencies shall seek in all actions to minimize the adverse effects of the regulatory program under this section on the use and value of privately owned property.

''(7) PROCEDURES FOR EMERGENCIES.—The Secretary shall develop procedures for facilitating actions under this section that are necessary to respond to emergency conditions (including flood events and other emergency situations) which may involve loss of life and property damage. Such procedures shall address circumstances requiring expedited approvals as well as circumstances requiring no formal approval under this section.

''(8) USE OF PROPERTY.—For purposes of this section, a use of property is limited by an agency action if a particular legal right to use that property no longer exists because of the action.

''(9) TRANSITION RULES.—

''(A) PERMIT REQUIRED.—After the effective date of this section under section 806 of the Comprehensive Wetlands Conservation and Management Act of 1995, no permit for any activity in wetlands or waters of the United States may be issued except in accordance with this section. Any application for a permit for

such an activity pending under this section on such effective date shall be deemed to be an application for a permit under this section.

''(B) PRIOR PERMITS.—Any permit for an activity in wetlands or waters of the United States issued under this section prior to the effective date referred to in subparagraph (A) shall be deemed to be a permit under this section and shall continue in force and effect for the term of the permit unless revoked, modified, suspended, or canceled in accordance with this section.

''(C) REEVALUATION.—

''(i) PETITION.—Any person holding a permit for an activity in wetlands or water of the United States on the effective date referred to in subparagraph (A) may petition, after such effective date, the Secretary for reevaluation of any decision made before such effective date concerning (I) a determination of regulatory jurisdiction under this section, or (II) any condition imposed under the permit. Upon receipt of a petition for reevaluation, the Secretary shall conduct the reevaluation in

accordance with the provisions of this section.

''(ii) MODIFICATION OF PERMIT.—If the Secretary finds that the provisions of this section apply with respect to activities and lands which are subject to the permit, the Secretary shall modify, revoke, suspend, cancel, or continue the permit as appropriate in accordance with the provisions of this section; except that no compensation shall be awarded under this section to any person as a result of reevaluation pursuant to this subparagraph and, if the permit covers activities in type A wetlands, the permit shall continue in effect without modification.

''(iii) PROCEDURE.—The reevaluation shall be carried out in accordance with time limits set forth in subsection (e)(5) and shall be subject to administrative appeal under subsection (i).

''(D) PREVIOUSLY DENIED PERMITS.—No permit shall be issued under this section, no exemption shall be available under subsection (f), and no exception shall be available under sub-

section (g)(1)(B), for any activity for which a permit has previously been denied by the Secretary on more than one occasion unless such activity—

''(i) has been approved by the affected State, county, and local government within the boundaries of which the activity is proposed;

''(ii) in the case of unincorporated land, has been approved by all local governments within 1 mile of the proposed activity; and

''(iii) would result in a net improvement to water quality at the site of such activity.

''(10) CERTIFICATION.—Notwithstanding any other provision of this Act, the Administrator shall not, either directly or indirectly, impose any requirement or condition in a certification required under section 401 that the Secretary determines is inconsistent with the provisions of this section.

''(11) DEFINITIONS.—In this section the following definitions apply:

''(A) ACTIVITY IN WETLANDS OR WATERS OF THE UNITED STATES.—The term 'activity in

wetlands or waters of the United States' means—

''(i) the discharge of dredged or fill material into waters of the United States, including wetlands at a specific disposal site; or

''(ii) the draining, channelization, or excavation of wetlands.

''(B) AGENCY.—The term 'agency' has the meaning given that term in section 551 of title 5, United States Code.

''(C) AGENCY ACTION.—The term 'agency action' has the meaning given that term in section 551 of title 5, United States Code, but also includes the making of a grant to a public authority conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency.

''(D) AGRICULTURAL LAND.—The term 'agricultural land' means cropland, pastureland, native pasture, rangeland, an orchard, a vineyard, nonindustrial forest land, an area that supports a water dependent crop (including cranberries, taro, watercress, or rice), and any other land used to produce or support the pro-

duction of an annual or perennial crop (including forage or hay), aquaculture product, nursery product, or wetland crop or the production of livestock.

''(E) CONSERVED WETLANDS.—The term 'conserved wetlands' means wetlands that are located in the National Park System, National Wildlife Refuge System, National Wilderness System, the Wild and Scenic River System, and other similar Federal conservation systems, combined with wetlands located in comparable types of conservation systems established under State and local authority within State and local land use systems.

''(F) ECONOMIC BASE LANDS.—The term 'economic base lands' means lands conveyed to, selected by, or owned by Alaska Native entities pursuant to the Alaska Native Claims Settlement Act, Public Law 92–203 or the Alaska Native Allotment Act of 1906 (34 Stat. 197), and lands conveyed to, selected by, or owned by the State of Alaska pursuant to the Alaska Statehood Act, Public Law 85–508.

''(G) FAIR MARKET VALUE.—The term 'fair market value' means the most probable

price at which property would change hands, in a competitive and open market under all conditions requisite to a fair sale, between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts, at the time the agency action occurs.

''(H) LAW OF A STATE.—The term 'law of a State' includes the law of a political subdivision of a State.

''(I) MITIGATION BANK.—The term 'mitigation bank' means a wetlands restoration, creation, enhancement, or preservation project undertaken by one or more parties, including private and public entities, expressly for the purpose of providing mitigation compensation credits to offset adverse impacts to wetlands or other waters of the United States authorized by the terms of permits allowing activities in such wetlands or waters.

''(J) NAVIGATIONAL DREDGING.—The term 'navigational dredging' means the dredging of ports, waterways, and inland harbors, including berthing areas and local access channels appurtenant to a Federal navigation channel.

''(K) PROPERTY.—The term 'property' means land and includes the right to use or receive water.

''(L) SECRETARY.—The term 'Secretary' means the Secretary of the Army.

''(M) STATE WITH SUBSTANTIAL CONSERVED WETLANDS AREAS.—The term 'State with substantial conserved wetlands areas' means any State which—

''(i) contains at least 10 areas of wetlands for each acre of wetlands filled, drained, or otherwise converted within such State (based upon wetlands loss statistics reported in the 1990 United States Fish and Wildlife Service Wetlands Trends report to Congress entitled 'Wetlands Losses in the United States 1780's to 1980's'); or

''(ii) the Secretary of the Army determines has sufficient conserved wetlands areas to provided adequate wetlands conservation in such State, based on the policies set forth in this Act.

''(N) VERNAL POOLS.—The term 'vernal pools' means individual isolated wetlands that

have exceptional waterfowl habitat functions and that exhibit the following characteristics:

''(i) an area greater than ½ acre;

''(ii) seasonal standing for no less than 45 consecutive days during the fall and winter in an average precipitation season;

''(iii) an impermeable subsurface hard pan soil layer that prevents subsurface water drainage or percolation; and

''(iv) a surface outlet for relief of water flow.

''(O) WETLANDS.—The term 'wetlands' means those lands that meet the criteria for delineation of lands as wetlands set forth in subsection (g).''.

SEC. 804. DEFINITIONS.

Section 502 (33 U.S.C. 1362) is further amended—

(1) in paragraph (6)—

(A) by striking ''dredged spoil,'';

(B) by striking ''or (B)'' and inserting ''(B)''; and

(C) by inserting before the period at the end ''; and (C) dredged or fill material''; and

(2) by adding at the end thereof the following new paragraphs:

''(28) The term 'wetlands' means lands which have a predominance of hydric soils and which are inundated by surface water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

''(29) The term 'creation of wetlands' means an activity that brings a wetland into existence at a site where it did not formerly occur for the purpose of compensatory mitigation.

''(30) The term 'enhancement of wetlands' means any activity that increases the value of one or more functions in existing wetlands.

''(31) The term 'farmed wetland' means those agricultural lands, as defined in section 404, and associated nonagricultural lands exhibiting wetlands characteristics, as delineated solely by the Secretary of Agriculture.

''(32) The term 'fastlands' means lands located behind legally constituted man-made structures or natural formations, such as levees constructed and maintained to permit the utilization of such lands for commercial, indus-

trial, or residential purposes consistent with local land use planning requirements.

''(33) The term 'wetlands functions' means the roles wetlands serve, including flood water storage, flood water conveyance, ground water recharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic use, food chain support, fisheries, wetlands plant habitat, aquatic habitat, and habitat for wetland dependent wildlife.

''(34) The term 'growing season' means, for each plant hardiness zone, the period between the average date of last frost in spring and the average date of first frost in autumn.

''(35) The term 'incidentally created wetlands' means lands that exhibit wetlands characteristics sufficient to meet the criteria for delineation of wetlands, where one or more of such characteristics is the unintended result of human induced alterations of hydrology.

''(36) The term 'maintenance' when used in reference to wetlands means activities undertaken to assure continuation of a wetland or the accomplishment of project goals after a restoration or creation project has been technically completed, including water level manipulations and control of nonnative plant species.

''(37) The term 'mitigation banking' means wetlands restoration, enhancement, preservation or creation for the purpose of providing compensation for wetland degradation or loss.

''(38) The term 'normal farming, silviculture, aquaculture and ranching activities' means normal practices identified as such by the Secretary of Agriculture, in consultation with the Cooperative Extension Service for each State and the land grant university system and agricultural colleges of the State, taking into account existing practices and such other practices as may be identified in consultation with the affected industry or community.

''(39) The term 'restoration' in reference to wetlands means an activity undertaken to return a wetland from a disturbed or altered condition with lesser acreage or fewer functions to a previous condition with greater wetlands acreage or functions.

''(40) The term 'temporary impact' means the disturbance or alteration of wetlands caused by activities under circumstances in which, within 3 years following the commencement of such activities, such wetlands—

''(A) are returned to the conditions in existence prior to the commencement of such activity; or

''(B) display conditions sufficient to ensure, that without further human action, such wetlands

will return to the conditions in existence prior to the commencement of such activity.

''(41) The term 'airport hazard' has the meaning such term has under section 47102 of title 49, United States Code.''.

SEC. 805. TECHNICAL AND CONFORMING AMENDMENTS.

(a) VIOLATION.—Section 301(a) (33 U.S.C. 1311(a)) is amended—

(1) by striking ''402, and 404'' and inserting ''and 402''; and

(2) by adding at the end the following: ''Except as in compliance with this section and section 404, the undertaking of any activity in wetlands or waters of the United States shall be unlawful.''.

(b) FEDERAL ENFORCEMENT.—Section 309 (33 U.S.C. 1319) is amended—

(1) in subsection (a)(1) by striking ''or 404'';

(2) in subsection (a)(3) by striking ''or in a permit issued under section 404 of this Act by a State'';

(3) in each of subsections (c)(1)(A) and (c)(2)(A) by striking ''or in a permit'' and all that follows through ''State;'' and inserting a semicolon;

(4) in subsection (c)(3)(A) by striking ''or in a permit'' and all that follows through ''State, and'' and inserting ''and'';

(5) by adding at the end of subsection (c) the following:

''(8) TREATMENT OF CERTAIN VIOLATIONS.—Any person who violates section 301 with respect to an activity in wetlands or waters of the United States for which a permit is required under section 404 shall not be subject to punishment under this subsection but shall be subject to punishment under section 404(k)(5).'';

(6) in subsection (d) by striking '', or in a permit issued under section 404 of this Act by a State,'';

(7) by adding at the end of subsection (d) the following: ''Any person who violates section 301 with respect to an activity in wetlands or waters of the United States for which a permit is required under section 404 shall not be subject to a civil penalty under this subsection but shall be subject to a civil penalty under section 404(k)(4).'';

(8) in subsection (g)(1)—

(A) by striking ''—'' and all that follows through ''(A)'';

(B) by striking ''or in a permit issued under section 404 by a State, or''; and

(C) by striking ''(B)'' and all that follows through ''as the case may be,'' and inserting ''the Administrator'';

(9) by adding at the end of subsection (g) the following:

''(12) TREATMENT OF CERTAIN VIOLATIONS.—Any person who violates section 301 with respect to an activity in wetlands or waters of the United States for which a permit is required under section 404 shall not be subject to assessment of a civil penalty under this subsection but shall be subject to assessment of a civil penalty under section 404(k)(4).'';

(10) by striking ''or Secretary'', ''or the Secretary'', ''or the Secretary, as the case may be,'', ''or Secretary's'', and ''and the Secretary'' each place they appear; and

(11) in subsection (g)(9)(B) by inserting a comma after ''Administrator''.

SEC. 806. EFFECTIVE DATE.

This title, including the amendments made by this title, shall take effect on the 90th day following the date of the enactment of this Act.

TITLE IX—NAVIGATIONAL DREDGING

SEC. 901. REFERENCES TO ACT.

Except as otherwise expressly provided, whenever in this title 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 made to a section or other provision of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.).

SEC. 902. ENVIRONMENTAL PROTECTION AGENCY PERMITS.

Section 102(c) (33 U.S.C. 1412(c)) is amended—

(1) in the first sentence of paragraph (3) by striking ''the Administrator, in conjunction with the Secretary,'' and inserting ''the Secretary, in conjunction with the Administrator,''; and

(2) in the second sentence of paragraph (3) by striking ''the Administrator and the Secretary'' and inserting ''the Secretary and the Administrator''.

SEC. 903. CORPS OF ENGINEERS PERMITS.

(a) DISPOSAL SITES.—Section 103(b) (33 U.S.C. 1413(b)) is amended—

(1) in the matter preceding paragraph (1) by striking ‘‘, with the concurrence of the Administrator,’’; and

(2) in paragraph (3) by striking ‘‘Administrator’’ and inserting ‘‘Secretary’’.

(b) CONSULTATION WITH THE ADMINISTRATOR.—Section 103(c) (33 U.S.C. 1413(c)) is amended to read as follows:

‘‘(c) CONSULTATION WITH THE ADMINISTRATOR.—Prior to issuing a permit to any person under this section, the Secretary shall first consult with the Administrator.’’.

SEC. 904. PENALTIES.

Section 105 (33 U.S.C. 1415) is amended—

(1) in the first sentence by inserting ‘‘or, with respect to violations of section 103, the Secretary’’ before the period at the end;

(2) in the fourth, fifth, and sixth sentences by inserting ‘‘or the Secretary, as the case may be,’’ after ‘‘Administrator’’ each place it appears; and

(3) in subsection (g)(2)(C) by inserting ‘‘or the Secretary, as the case may be,’’ after ‘‘the Administrator’’ the first place it appears.

SEC. 905. ANNUAL REPORT.

Section 112 (33 U.S.C. 1421) is amended by striking ‘‘with the concurrence of the Administrator’’.

SEC. 906. REFERENCE TO COMMITTEE.

Section 104(i)(3) (33 U.S.C. 1414(i)(3)) is amended by striking ''Merchant Marine and Fisheries'' and inserting ''Transportation and Infrastructure''.

TITLE X—ADDITIONAL PROVISIONS

SEC. 1001. COASTAL NONPOINT POLLUTION CONTROL.

(a) IN GENERAL.—Section 6217(a)(1) of the Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. 1451 note) is amended—

(1) by striking ''shall'' the first place it appears and inserting ''may'';

(2) by striking ''the Secretary and''; and

(3) by inserting after the first sentence the following: ''Notwithstanding the preceding sentence, if the Administrator determines, in consultation with the State, such program is needed to supplement the program under section 319 of the Federal Water Pollution Control Act as it relates to the coastal zone, the State shall prepare and submit such program.''.

(b) PROGRAM SUBMISSION, APPROVAL, AND IMPLEMENTATION.—Section 6217(c) of such Act is amended—

(1) in paragraph (1)—

(A) by striking ''the Secretary and the Administrator shall jointly'' and inserting ''the Administrator shall''; and

(B) by striking ''The program'' and all that follows through the period at the end of the paragraph and inserting ''The program shall be approved if the Administrator determines that the program meets the requirements of this section.''; and

(2) in paragraph (3)—

(A) by striking ''If the Secretary'' and inserting ''If the Administrator'';

(B) by striking ''the Secretary shall withhold'' and inserting ''the Administrator shall direct the Secretary to withhold''; and

(C) by striking ''The Secretary shall make'' and inserting ''The Administrator shall direct the Secretary to make''.

(c) FINANCIAL ASSISTANCE.—Section 6217(f) of such Act is amended—

(1) in paragraph (1)—

(A) by striking ''the Secretary, in consultation with the Administrator,'' and inserting ''the Administrator''; and

(B) by inserting ''and implementing'' after ''developing'';

(2) in paragraph (2) by inserting ''and implementing'' after ''developing''; and

(3) in paragraph (4)—

(A) by striking ''the Secretary'' each place it appears and inserting ''the Administrator'';

(B) by striking '', in consultation with the Administrator,''; and

(C) by inserting ''and implementing'' after ''preparing''.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 6217(h)(2) of such Act is amended—

(1) in subparagraph (A) by striking '', other than for providing in the form of grants under subsection (f)''; and

(2) in subparagraph (B) by striking ''the Secretary'' and inserting ''the Administrator''.

Passed the House of Representatives May 16, 1995.

Attest: ROBIN H. CARLE,

Clerk.

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