

106TH CONGRESS
2D SESSION

H. R. 5606

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 30, 2000

Mr. PALLONE introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clean Water Enforce-
5 ment and Compliance Improvement Act of 2000”.

6 **SEC. 2. FINDINGS.**

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

8 (1) a significant number of persons who have
9 been issued permits under section 402 of the Fed-

1 eral Water Pollution Control Act are in violation of
2 such permits;

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

7 (3) full, accurate and prompt reporting of pos-
8 sible violations of the Federal Water Pollution Con-
9 trol Act is necessary for implementation and well
10 served by assuring that good faith reporters of pos-
11 sible violations are protected against adverse per-
12 sonnel actions;

13 (4) often violations of such permits continue for
14 a considerable period of time, yielding significant
15 economic benefits for the violator and thus penal-
16 izing similar facilities which act lawfully;

17 (5) penalties assessed and collected by the Ad-
18 ministrator from violators of such permits are often
19 less than the economic benefit gained by the violator;

20 (6) swift and timely enforcement by the Admin-
21 istrator and the States of violations of such permits
22 is necessary to increase levels of compliance with
23 such permits; and

24 (7) actions of private citizens have been effec-
25 tive in enforcing such permits and directing funds to

1 environmental mitigation projects with over \$12.8
2 million in penalties and interest having been recov-
3 ered and deposited with the Treasury of the United
4 States over the fiscal years 1990 through 1999.

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

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

21 “(i) FINDING WITH RESPECT TO CITIZEN SUITS.—
22 Congress finds that citizen suits are a valuable means of
23 enforcement of this Act and urges the Administrator to
24 take actions to encourage such suits, including providing
25 information concerning violators to citizen groups to assist

1 them in bringing suits, providing expert witnesses and
2 other evidence with respect to such suits, and filing amicus
3 curiae briefs on important issues related to such suits.”.

4 **SEC. 3. VIOLATIONS OF REQUIREMENTS OF LOCAL CON-**
5 **TROL AUTHORITIES.**

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

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

16 **SEC. 4. INSPECTIONS, MONITORING, AND PROVIDING IN-**
17 **FORMATION.**

18 (a) APPLICABILITY OF REQUIREMENTS.—Section
19 308(a)(1)(A) of the Federal Water Pollution Control Act
20 (33 U.S.C. 1318(a)(1)(A)) is amended by striking “the
21 owner or operator of any point source” and inserting “a
22 person subject to any requirement of this Act”.

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

1 (1) by inserting “(including information con-
2 tained in the permit compliance system of the Envi-
3 ronmental Protection Agency)” after “obtained
4 under this section”;

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

6 (3) by inserting “by computer telecommuni-
7 cation and other means for a period of at least 10
8 years” after “public” the first place it appears.

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

11 “(e) PUBLIC INFORMATION.—

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

1 “(A) indicates the water quality standard
2 that is being violated or the nature and extent
3 of the restriction on fish or shellfish consump-
4 tion, as the case may be;

5 “(B) includes (i) information on the envi-
6 ronmental and health effects associated with
7 the failure to meet such standard or with the
8 consumption of fish or shellfish subject to the
9 restriction, and (ii) a phone number for obtain-
10 ing additional information relating to the viola-
11 tion and restriction; and

12 “(C) will be maintained until the body of
13 water is in compliance with the water quality
14 standard or until all fish and shellfish consump-
15 tion restrictions are terminated with respect to
16 the body of water, as the case may be.

17 “(2) NOTICE OF DISCHARGES TO NAVIGABLE
18 WATERS.—Except for permits issued to municipali-
19 ties for discharges composed entirely of stormwater
20 under section 402 of this Act, each permit issued
21 under section 402 by the Administrator or by a
22 State shall ensure compliance with the following re-
23 quirements:

24 “(A) Every permittee shall conspicuously
25 maintain at all public entrances to the facility

1 a clearly visible sign which indicates that the
2 facility discharges pollutants into navigable wa-
3 ters and the location of such discharges; the
4 name, business address, and phone number of
5 the permittee; the permit number; and a loca-
6 tion at which a copy of the permit and public
7 information required by this paragraph is main-
8 tained and made available for inspection or a
9 phone number for obtaining such information.

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

1 “(3) REGULATIONS.—

2 “(A) ISSUANCE.—The Administrator—

3 “(i) not later than 6 months after the
4 date of the enactment of this subsection,
5 shall propose regulations to carry out this
6 subsection; and

7 “(ii) not later than 18 months after
8 such date of enactment, shall issue such
9 regulations.

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

12 “(i) uniform requirements and proce-
13 dures for identifying and posting bodies of
14 water under paragraph (1);

15 “(ii) minimum information to be in-
16 cluded in signs posted and notices issued
17 pursuant to this subsection;

18 “(iii) uniform requirements and proce-
19 dures for fish and shellfish sampling and
20 analysis; and

21 “(iv) uniform requirements for deter-
22 mining the nature and extent of fish and
23 shellfish bans, advisories, and consumption
24 restrictions which—

1 “(I) address cancer and non-
2 cancer human health risks;

3 “(II) take into account the ef-
4 fects of all fish and shellfish contami-
5 nants, including the cumulative and
6 synergistic effects;

7 “(III) assure the protection of
8 subpopulations who consume higher
9 than average amounts of fish and
10 shellfish or are particularly susceptible
11 to the effects of such contamination;

12 “(IV) address race, gender, eth-
13 nic composition, or social and eco-
14 nomic factors, based on the latest
15 available studies of national or re-
16 gional consumption by and impacts on
17 such subpopulations unless more reli-
18 able site-specific data is available;

19 “(V) are based on a margin of
20 safety that takes into account the un-
21 certainties in human health impacts
22 from such contamination; and

23 “(VI) evaluate assessments of
24 health risks of contaminated fish and
25 shellfish that are used in pollution

1 control programs developed by the Ad-
2 ministrator under this Act.”.

3 (d) STATE REPORTS.—Section 305(b)(1) of such Act
4 (33 U.S.C. 1315(b)(1)) is amended—

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

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

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

10 “(F) a list identifying bodies of water for
11 which signs were posted under section
12 308(e)(1) in the preceding year and the reason
13 or reasons for such posting.”.

14 **SEC. 5. CIVIL PENALTIES.**

15 (a) ENFORCEMENT OF LOCAL PRETREATMENT RE-
16 QUIREMENTS.—

17 (1) COMPLIANCE ORDERS.—

18 (A) INITIAL ACTION.—Section 309(a)(1) of
19 the Federal Water Pollution Control Act (33
20 U.S.C. 1319(a)(1)) is amended by inserting
21 after “404 of this Act,” the following: “or is in
22 violation of any requirement imposed in a
23 pretreatment program approved under section
24 402(a)(3) or 402(b)(8) of this Act,”.

1 (B) ISSUANCE OF ORDERS.—Section
2 309(a)(3) of such Act is amended by inserting
3 after “404 of this Act by a State,” the fol-
4 lowing: “or is in violation of any requirement
5 imposed in a pretreatment program approved
6 under section 402(a)(3) or 402(b)(8) of this
7 Act,”.

8 (2) CRIMINAL PENALTIES.—Section
9 309(c)(3)(A) of such Act is amended by inserting
10 after “Army or by a State,” the following: “or know-
11 ingly violates any requirement imposed in a
12 pretreatment program approved under section
13 402(a)(3) or 402(b)(8) of this Act,”.

14 (3) ADMINISTRATIVE PENALTIES.—Section
15 309(g)(1)(A) of such Act is amended by inserting
16 after “404 by a State,” the following: “or has vio-
17 lated any requirement imposed in a pretreatment
18 program approved under section 402(a)(3) or
19 402(b)(8) of this Act or an order issued by the Ad-
20 ministrator under subsection (a) of this section,”.

21 (b) TREATMENT OF SINGLE OPERATIONAL UP-
22 SETS.—

23 (1) CRIMINAL PENALTIES.—Section 309(c) of
24 such Act is amended by striking paragraph (5) and

1 redesignating paragraphs (6) and (7) as paragraphs
2 (5) and (6), respectively.

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

5 (3) ADMINISTRATIVE PENALTIES.—Section
6 309(g)(3) of such Act is amended by striking the
7 last sentence.

8 (c) USE OF CIVIL PENALTIES FOR MITIGATION
9 PROJECTS.—

10 (1) IN GENERAL.—Section 309(d) of such Act
11 is amended by inserting after the second sentence
12 the following: “The court, in its discretion, may
13 order that all or a portion of a civil penalty be used
14 for carrying out beneficial projects to enhance public
15 health or the environment by restoring or otherwise
16 improving, in a manner consistent with this Act, the
17 water quality, wildlife, or habitat of specific waters
18 or watershed of the State in which the violation oc-
19 curred.”.

20 (2) CONFORMING AMENDMENT.—Section
21 505(a) of such Act (33 U.S.C. 1365(a)) is amended
22 by inserting before the period at the end of the last
23 sentence the following: “, including ordering, in ac-
24 cordance with section 309(d), the use of all or a por-
25 tion of a civil penalty for carrying out beneficial

1 projects to enhance public health or the environment
2 by restoring or otherwise improving, in a manner
3 consistent with this Act, the water quality, wildlife,
4 or habitat of specific waters or watershed of the
5 State in which the violation occurred”.

6 (d) DETERMINATION OF AMOUNT OF PENALTIES.—

7 (1) CIVIL PENALTIES.—The second sentence of
8 section 309(d) of such Act (33 U.S.C. 1319(d)) is
9 amended by inserting “the amount of any penalty
10 previously imposed on the violator by a court or ad-
11 ministrative agency for the same violation or viola-
12 tions,” after “economic impact of the penalty on the
13 violator,”.

14 (2) ADMINISTRATIVE PENALTIES.—Section
15 309(g)(3) of such Act is amended—

16 (A) by striking “or savings”; or

17 (B) by inserting “the amount of any pen-
18 alty previously imposed on the violator by a
19 court or administrative agency for the same vio-
20 lation or violations,” after “resulting from the
21 violation,”.

22 (e) LIMITATION ON DEFENSES.—Section 309(g)(1)
23 of such Act is amended by adding at the end the following:
24 “In a proceeding to assess or review a penalty under this
25 subsection, the adequacy of consultation between the Ad-

1 administrator or the Secretary, as the case may be, and the
2 State shall not be a defense to assessment or enforcement
3 of such penalty.”.

4 (f) AMOUNTS OF ADMINISTRATIVE CIVIL PEN-
5 ALTIES.—

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

8 “(2) AMOUNT OF PENALTIES; NOTICE; HEAR-
9 ING.—

10 “(A) MAXIMUM AMOUNT OF PENALTIES.—

11 The amount of a civil penalty under paragraph
12 (1) may not exceed \$25,000 per violation per
13 day for each day during which the violation
14 continues.

15 “(B) WRITTEN NOTICE.—Before issuing
16 an order assessing a civil penalty under this
17 subsection, the Administrator or the Secretary,
18 as the case may be, shall give to the person to
19 be assessed the penalty written notice of the
20 Administrator’s or Secretary’s proposal to issue
21 the order and the opportunity to request, within
22 30 days of the date the notice is received by
23 such person, a hearing on the proposed order.

24 “(C) HEARINGS NOT ON THE RECORD.—If
25 the proposed penalty does not exceed \$25,000,

1 the hearing shall not be subject to section 554
2 or 556 of title 5, United States Code, but shall
3 provide a reasonable opportunity to be heard
4 and to present evidence.

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

12 (2) CONFORMING AMENDMENTS.—Section
13 309(g) of such Act is amended—

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

16 (B) in the second sentence of paragraph
17 (4)(C) by striking “(2)(A) in the case of a class
18 I civil penalty and paragraph (2)(B) in the case
19 of a class II civil penalty” and inserting “(2)”;
20 and

21 (C) in the first sentence of paragraph (8)
22 by striking “assessment—” and all that follows
23 through “by filing” and inserting “assessment
24 in the United States District Court for the Dis-

1 trict of Columbia or in the district in which the
2 violation is alleged to have occurred by filing”.

3 (g) STATE ENFORCEMENT ACTIONS AS BAR TO FED-
4 ERAL ENFORCEMENT ACTIONS.—Section 309(g)(6)(A) of
5 such Act is amended—

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

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

9 (3) by redesignating clause (iii) as clause (ii)
10 and in such clause—

11 (A) by striking “, the Secretary, or the
12 State” and inserting “or the Secretary”; and

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

15 (h) RECOVERY OF ECONOMIC BENEFIT.—Section
16 309 of such Act is amended by adding at the end the
17 following:

18 “(h) RECOVERY OF ECONOMIC BENEFIT.—

19 “(1) GENERAL RULE.—Notwithstanding any
20 other provision of this section, any civil penalty as-
21 sessed and collected under this section must be in an
22 amount which is not less than the amount of any
23 economic benefit resulting from the violation for
24 which the penalty is assessed.

1 “(2) REGULATIONS.—Not later than 18 months
2 after the date of the enactment of this subsection,
3 the Administrator shall issue regulations establishing
4 a methodology for calculating the economic benefits
5 or savings resulting from violations of this Act.
6 Pending issuance of such regulations, this subsection
7 shall be in effect and economic benefits shall be cal-
8 culated for purposes of paragraph (1) on a case-by-
9 case basis.”.

10 (i) LIMITATION ON COMPROMISES.—Section 309 of
11 such Act is further amended by adding at the end the fol-
12 lowing:

13 “(i) LIMITATION ON COMPROMISES OF CIVIL PEN-
14 ALTIES.—Notwithstanding any other provision of this sec-
15 tion, the amount of a civil penalty assessed under this sec-
16 tion may not be compromised below the amount deter-
17 mined by adding—

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

20 “(2) 50 percent of the difference between the
21 amount of the civil penalty assessed and such min-
22 imum amount.”.

23 (j) MINIMUM AMOUNT FOR SERIOUS VIOLATIONS.—
24 Section 309 of such Act is further amended by adding at
25 the end the following:

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

3 “(1) SERIOUS VIOLATIONS.—Notwithstanding
4 any other provision of this section (other than para-
5 graph (2)), the minimum civil penalty which shall be
6 assessed and collected under this section from a
7 person—

8 “(A) for a discharge from a point source of
9 a hazardous pollutant which exceeds or other-
10 wise violates any applicable effluent limitation
11 established by or under this Act by 20 percent
12 or more, or

13 “(B) for a discharge from a point source
14 of a pollutant (other than a hazardous pollut-
15 ant) which exceeds or otherwise violates any ap-
16 plicable effluent limitation established by or
17 under this Act by 40 percent or more,
18 shall be \$1,000 for the first such violation in a 180-
19 day period.

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

24 “(A) for the second or more discharge in
25 a 180-day period from a point source of a haz-

1 ardous pollutant which exceeds or otherwise vio-
2 lates any applicable effluent limitation estab-
3 lished by or under this Act by 20 percent or
4 more,

5 “(B) for the second or more discharge in
6 a 180-day period from a point source of a pol-
7 lutant (other than a hazardous pollutant) which
8 exceeds or otherwise violates any applicable ef-
9 fluent limitation established by or under this
10 Act by 40 percent or more,

11 “(C) for the fourth or more discharge in a
12 180-day period from a point source of any pol-
13 lutant which exceeds or otherwise violates the
14 same effluent limitation, or

15 “(D) for not filing in a 180-day period 2
16 or more reports in accordance with section
17 402(r)(1),

18 shall be \$5,000 for each of such violations.

19 “(3) MANDATORY INSPECTIONS FOR SIGNIFI-
20 CANT NONCOMPLIERS.—The Administrator shall
21 identify any person described in paragraph (2) as a
22 significant noncomplier and shall conduct an inspec-
23 tion described in section 402(q) of this Act of the fa-
24 cility at which the violations were committed. Such
25 inspections shall be conducted at least once in the

1 180-day period following the date of the most recent
2 violation which resulted in such person being identi-
3 fied as a significant noncomplier.

4 “(4) ANNUAL REPORTING.—The Administrator
5 shall transmit to Congress and to the Governors of
6 the States and shall publish in the Federal Register,
7 on an annual basis, a list of all persons identified as
8 significant noncompliers under paragraph (3) in the
9 preceding calendar year and the violations which re-
10 sulted in such classifications. The Administrator
11 shall make the list available to the public upon re-
12 quest.

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

17 (k) STATE PROGRAM.—Section 402(b)(7) of such Act
18 (33 U.S.C. 1342(b)(7)) is amended to read as follows:

19 “(7) To abate violations of the permit or the
20 permit program which shall include, beginning on
21 the last day of the 2-year period beginning on the
22 date of the enactment of the Clean Water Compli-
23 ance and Enforcement Improvement Act of 2000, a
24 penalty program comparable to the Federal penalty
25 program under section 309 of this Act and which

1 shall include at a minimum criminal, civil, and civil
2 administrative penalties, and may include other ways
3 and means of enforcement, which the State dem-
4 onstrates to the satisfaction of the Administrator are
5 equally effective as the Federal penalty program;”.

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

10 **SEC. 6. NATIONAL POLLUTANT DISCHARGE ELIMINATION**
11 **PERMITS.**

12 (a) WITHDRAWAL OF STATE PROGRAM APPROVAL.—
13 Section 402(b) of the Federal Water Pollution Control Act
14 (33 U.S.C. 1342(b)) is amended by striking “unless he
15 determines that adequate authority does not exist:” and
16 inserting the following: “only when he determines that
17 adequate authority exists and shall withdraw program ap-
18 proval whenever he determines that adequate authority no
19 longer exists:”.

20 (b) JUDICIAL REVIEW OF RULINGS ON APPLICA-
21 TIONS FOR STATE PERMITS.—Section 402(b)(3) of such
22 Act is amended by inserting “and to ensure that any inter-
23 ested person who participated in the public comment proc-
24 ess and any other person who could obtain judicial review
25 of that action under any other applicable law has the right

1 to judicial review of such ruling” before the semicolon at
2 the end.

3 (c) INSPECTIONS FOR MAJOR INDUSTRIAL AND MU-
4 NICIPAL DISCHARGERS.—Section 402(b) of such Act is
5 amended—

6 (1) by striking “and” at the end of paragraph
7 (8);

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

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

11 “(10) To ensure that any permit for a dis-
12 charge from a major industrial or municipal facility,
13 as defined by the Administrator by regulation, in-
14 cludes conditions under which such facility will be
15 subject to at least annual inspections by the State
16 in accordance with subsection (q) of this section;”.

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

20 “(11) To ensure that any permit for a dis-
21 charge from a publicly owned treatment works in the
22 State includes conditions under which the treatment
23 works will require any significant industrial user of
24 the treatment works, as defined by the Adminis-
25 trator by regulation, to prepare and submit to the

1 Administrator, the State, and the treatment works a
2 monthly discharge monitoring report as a condition
3 to using the treatment works;”.

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

7 “(12) To ensure that, after the last day of the
8 2-year period beginning on the date of the enact-
9 ment of this paragraph, any significant industrial
10 user, or other source designated by the Adminis-
11 trator, introducing a pollutant into a publicly owned
12 treatment works has, and operates in accordance
13 with, a permit issued by the treatment works or the
14 State for introduction of such pollutant; and”.

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

18 “(13) To ensure that the State will grant to
19 publicly owned treatment works in the State, not
20 later than 3 years after the date of the enactment
21 of this paragraph, authority, power, and responsi-
22 bility to conduct inspections under subsection (q) of
23 this section and to assess and collect civil penalties
24 and civil administrative penalties under paragraph
25 (7) of this subsection.”.

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

3 “(q) INSPECTION.—

4 “(1) GENERAL RULE.—Each permit for a dis-
5 charge into the navigable waters or introduction of
6 pollutants into a publicly owned treatment works
7 issued under this section shall include conditions
8 under which the effluent being discharged will be
9 subject to random unannounced inspections in ac-
10 cordance with this subsection by the Administrator
11 or the State, in the case of a State permit program
12 under this section.

13 “(2) MINIMUM STANDARDS.—Not later than 6
14 months after the date of enactment of this sub-
15 section, the Administrator shall establish minimum
16 standards for inspections under this subsection.
17 Such standards shall require, at a minimum, the fol-
18 lowing:

19 “(A) An annual representative sampling by
20 the Administrator or the State, in the case of
21 a State permit program under this section, of
22 the effluent being discharged; except that if the
23 discharge is not from a major industrial or mu-
24 nicipal facility such sampling shall be conducted
25 at least once every 3 years.

1 “(B) An analysis of all samples collected
2 under subparagraph (A) by a Federal or State
3 owned and operated laboratory or a State ap-
4 proved laboratory, other than one that is being
5 used by the permittee or that is directly or indi-
6 rectly owned, operated, or managed by the
7 permittee.

8 “(C) An evaluation of the maintenance
9 record of any treatment equipment of the
10 permittee.

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

13 “(E) A random check of discharge moni-
14 toring reports of the permittee for each 12-
15 month period for the purpose of determining
16 whether or not such reports are consistent with
17 the applicable analyses conducted under sub-
18 paragraph (B).

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

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

23 “(r) REPORTING.—

24 “(1) GENERAL RULE.—Each person holding a
25 permit issued under this section which is determined

1 by the Administrator to be a major industrial or mu-
2 nicipal discharger of pollutants into the navigable
3 waters shall prepare and submit to the Adminis-
4 trator a monthly discharge monitoring report. Any
5 other person holding a permit issued under this sec-
6 tion shall prepare and submit to the Administrator
7 quarterly discharge monitoring reports or more fre-
8 quent discharge monitoring reports if the Adminis-
9 trator requires. Such reports shall contain, at a min-
10 imum, such information as the Administrator shall
11 require by regulation.

12 “(2) REPORTING OF HAZARDOUS DIS-
13 CHARGES.—

14 “(A) GENERAL RULE.—If a discharge
15 from a point source for which a permit is issued
16 under this section exceeds an effluent limitation
17 contained in such permit which is based on an
18 acute water quality standard or any other dis-
19 charge which may cause an exceedance of an
20 acute water quality standard or otherwise is
21 likely to cause injury to persons or damage to
22 the environment or to pose a threat to human
23 health and the environment, the person holding
24 such permit shall notify the Administrator and
25 the affected States and municipalities, in writ-

1 ing, of such discharge not later than 2 hours
2 after the later of the time at which such dis-
3 charge commenced or the time at which the
4 permittee knew or had reason to know of such
5 discharge.

6 “(B) SPECIAL RULE FOR HAZARDOUS POL-
7 LUTANTS.—If a discharge described in subpara-
8 graph (A) is of a hazardous pollutant (as de-
9 fined in section 309(j) of this Act), the person
10 holding such permit shall provide the Adminis-
11 trator with such additional information on the
12 discharge as may be required by the Adminis-
13 trator. Such additional information shall be
14 provided to the Administrator within 24 hours
15 after the later of the time at which such dis-
16 charge commenced or the time at which the
17 permittee became aware of such discharge.
18 Such additional information shall include, at a
19 minimum, an estimate of the danger posed by
20 the discharge to the environment, whether the
21 discharge is continuing, and the measures taken
22 or being taken (i) to remediate the problem
23 caused by the discharge and any damage to the
24 environment, and (ii) to avoid a repetition of
25 the discharge.

1 “(3) SIGNATURE.—All reports filed under para-
2 graph (1) must be signed and dated by the highest
3 ranking official having day-to-day managerial and
4 operational responsibility for the facility at which the
5 discharge occurs or, in the absence of such person,
6 by another responsible high ranking official at such
7 facility. Such highest ranking official shall be re-
8 sponsible for the accuracy of all information con-
9 tained in such reports; except that such highest
10 ranking official may file with the Administrator
11 amendments to any such report if the report was
12 signed in the absence of the highest ranking official
13 by another high ranking official and if such amend-
14 ments are filed within 7 days of the return of the
15 highest ranking official.”.

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

19 “(s) SIGNIFICANT NONCOMPLIERS.—No permit may
20 be issued under this section to any person (other than a
21 publicly owned treatment works) identified under section
22 309(j)(3) of this Act or to any other person owned or con-
23 trolled by the identified person, owning or controlling the
24 identified person, or under common control with the iden-
25 tified person, until the Administrator or the State or

1 States in which the violation or violations occur deter-
2 mines that the condition or conditions giving rise to such
3 violation or violations have been corrected. No permit ap-
4 plication submitted after the date of the enactment of this
5 subsection may be approved unless the application in-
6 cludes a list of all violations of this Act by a person identi-
7 fied under section 309(j) of this Act during the 3-year pe-
8 riod preceding the date of submission of the application
9 and evidence indicating whether the underlying cause of
10 each such violation has been corrected.”.

11 (j) APPLICABILITY.—The amendments made by this
12 section and section 8 shall apply to permits issued before,
13 on, or after the date of the enactment of this Act; except
14 that—

15 (1) with respect to permits issued before such
16 date of enactment to a major industrial or municipal
17 discharger, such amendments shall take effect on the
18 last day of the 1-year period beginning on such date
19 of enactment; and

20 (2) with respect to all other permits issued be-
21 fore such date of enactment, such amendments shall
22 take effect on the last day of the 18-month period
23 beginning on such date of enactment.

1 **SEC. 7. EXPIRED STATE PERMITS.**

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

5 “(5) EXPIRED STATE PERMITS.—

6 “(A) AUTHORITY OF ADMINISTRATOR.—In
7 any case in which—

8 “(i) a permit issued by a State for a
9 discharge has expired,

10 “(ii) the permittee has submitted an
11 application to the State for a new permit
12 for the discharge, and

13 “(iii) the State has not acted on the
14 application before the last day of the 12-
15 month period beginning on the date the
16 permit expired,

17 the Administrator may issue a permit for the
18 discharge under subsection (a).

19 “(B) TREATMENT IF NO NEW PERMIT.—If
20 a permit issued by a State for a discharge of
21 one or more pollutants expires and the State or
22 the Administrator has not issued a new permit
23 for the discharge by the last day of the 12-
24 month period beginning on the date the permit
25 expired, the permittee shall be in violation of

1 this Act if the permittee continues to discharge
2 such pollutants.

3 “(C) APPLICABILITY OF NEW REGULA-
4 TIONS.—If a State or the Administrator allows
5 a discharge to continue after the date of expira-
6 tion of a permit issued by the State or Adminis-
7 trator and before issuance of a new permit for
8 the discharge, regulations issued after such ex-
9 piration date shall apply to the discharge under
10 the expired permit.”.

11 **SEC. 8. POLLUTION PREVENTION PLANS.**

12 Section 402 of the Federal Water Pollution Control
13 Act (42 U.S.C. 1342) is further amended by adding at
14 the end the following:

15 “(k) POLLUTION PREVENTION PLANS.—

16 “(1) IN GENERAL.—Each applicant for a per-
17 mit for a discharge of one or more pollutants shall
18 submit to the Administrator, with the application for
19 the permit, a pollution prevention plan that details
20 the applicant’s plans for reducing the discharge of
21 such pollutants at a measurable rate.

22 “(2) FORM AND CONTENT.—The plan shall be
23 in such form and contain such information as the
24 Administrator may require by regulation.

1 “(3) DEADLINE FOR ISSUANCE OF REGULA-
2 TIONS.—The Administrator shall issue regulations to
3 carry out this subsection not later than the last day
4 of the 18-month period beginning on the date of en-
5 actment of this subsection.”.

6 **SEC. 9. COMPLIANCE SCHEDULE.**

7 Section 302(b)(2)(B) of the Federal Water Pollution
8 Control Act (33 U.S.C. 1312(b)(2)(B)) is amended by
9 adding at the end the following: “The Administrator may
10 only issue a permit pursuant to this subparagraph for a
11 period exceeding 2 years if the Administrator makes the
12 findings described in clauses (i) and (ii) of this subpara-
13 graph on the basis of a public hearing.”.

14 **SEC. 10. EMERGENCY POWERS.**

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

17 **“SEC. 504. COMMUNITY PROTECTION.**

18 “(a) ISSUANCE OF ORDERS; COURT ACTION.—Not-
19 withstanding any other provision of this Act, whenever the
20 Administrator finds that, because of an actual or threat-
21 ened direct or indirect discharge of a pollutant, there may
22 be an imminent and substantial endangerment to the pub-
23 lic health or welfare (including the livelihood of persons)
24 or the environment (including wildlife), the Administrator
25 may issue such orders or take such action as may be nec-

1 essary to protect public health or welfare or the environ-
2 ment and commence a suit (or cause it to be commenced)
3 in the United States district court for the district where
4 the discharge or threat occurs. Such court may grant such
5 relief to abate the threat and to protect against the
6 endangerment as the public interest and the equities re-
7 quire, enforce, and adjudge penalties for disobedience to
8 orders of the Administrator issued under this section, and
9 grant other relief according to the public interest and the
10 equities of the case.

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

17 **SEC. 11. CITIZEN SUITS.**

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

21 (1) in subsection (a)(1) by inserting “to have
22 violated (if there is evidence that the alleged viola-
23 tions has been repeated) or” after “who is alleged”;
24 and

1 (2) in subsection (f)(6) by inserting “has been
2 or” after “which”.

3 (b) TIME LIMIT.—Section 505(b)(1)(A) of such Act
4 is amended by striking “sixty days” and inserting “30
5 days”.

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

8 (1) in paragraph (1)(B) by striking “right.”
9 and inserting “right and may obtain costs of litigation
10 tion under subsection (d), or”; and

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

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

7 (e) LITIGATION COSTS.—Section 505(d) of such Act
8 is amended by striking “(d)” and the first sentence and
9 inserting the following:

10 “(d) “COSTS OF LITIGATION; BOND.—The court, in
11 issuing any final order in any action brought pursuant to
12 this section, may award costs of litigation (including rea-
13 sonable attorney and expert witness fees) and up to 5 per-
14 cent of any civil penalties obtained by settlement or court
15 order to any prevailing or substantially prevailing party
16 that initiated the litigation.”.

17 (f) PRETREATMENT REQUIREMENTS.—Section
18 505(f)(4) of such Act is amended by striking “or
19 pretreatment standards” and inserting “or pretreatment
20 standard or requirement described in section 307(d)”.

21 (g) EFFLUENT STANDARD DEFINITION.—Section
22 505(f)(6) of such Act is amended by inserting “narrative
23 or mathematical” before “condition”.

24 (h) CITIZEN DEFINED.—Section 505(g) of such Act
25 is amended to read as follows:

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

12 (i) OFFERS OF JUDGMENT.—Section 505 of such Act
13 is further amended by adding at the end the following:

14 “(i) APPLICABILITY OF OFFERS OF JUDGMENT.—Of-
15 fers of judgment pursuant to Rule 68 of the Federal Rules
16 of Civil Procedure shall not be applicable to actions
17 brought under subsection (a)(1) of this section.”.

18 **SEC. 12. EMPLOYEE PROTECTION.**

19 Section 507 of the Federal Water Pollution Control
20 Act (33 U.S.C. 1367) is amended—

21 (1) in subsection (e) by inserting “CONTINUING
22 EVALUATIONS” after “(e)”;

23 (2) by redesignating subsection (e) as sub-
24 section (f); and

1 (3) by striking subsections (a), (b), (c), and (d)
2 and inserting the following:

3 “(a) IN GENERAL.—No employer or other person
4 may harass, prosecute, hold liable, or discriminate against
5 any employee or other person because the person—

6 “(1) is assisting or demonstrating an intent to
7 assist in achieving compliance with any provision of
8 this Act (including a rule or regulation issued to
9 carry out this Act);

10 “(2) is refusing to violate or assist in the viola-
11 tion of any provision of this Act (including a rule or
12 regulation issued to carry out this Act);

13 “(3) has commenced, caused to be commenced,
14 or is about to commence a proceeding, has testified
15 or is about to testify at a proceeding, or has assisted
16 or participated or is about to assist or participate in
17 any manner in such a proceeding or in any other ac-
18 tion to carry out the purposes of this Act.

19 “(b) FILING COMPLAINTS AND PROCEDURES.—

20 “(1) FILING DEADLINE.—An employee alleging
21 a violation of subsection (a), or another person at
22 the employee’s request, may file a complaint with
23 the Secretary of Labor not later than 365 days after
24 the alleged violation occurred.

25 “(2) PROCEDURES.—

1 “(A) INVESTIGATION; PRELIMINARY OR-
2 DERS.—Not later than 60 days after receiving
3 a complaint, the Secretary shall conduct an in-
4 vestigation, decide whether it is reasonable to
5 believe the complaint has merit, and notify the
6 complainant and the person alleged to have
7 committed the violation of the findings. If the
8 Secretary decides it is reasonable to believe a
9 violation occurred, the Secretary shall include
10 with the decision findings and a preliminary
11 order for the relief provided under paragraph
12 (3).

13 “(B) OBJECTIONS TO PRELIMINARY
14 ORDER.—Not later than 30 days after the no-
15 tice under subparagraph (A) of this paragraph,
16 the complainant and the person alleged to have
17 committed the violation may file objections to
18 the findings or preliminary order, or both, and
19 request a hearing on the record. The filing of
20 objections does not stay a reinstatement or-
21 dered in the preliminary order. If a hearing is
22 not requested within the 30 days, the prelimi-
23 nary order is final and not subject to judicial
24 review.

1 “(C) HEARING; FINAL ORDER; SETTLE-
2 MENT AGREEMENT.—A hearing shall be con-
3 ducted expeditiously. Not later than 120 days
4 after the end of the hearing, the Secretary shall
5 issue a final order. Before the final order is
6 issued, the proceeding may be ended by a settle-
7 ment agreement made by the Secretary, the
8 complainant, and the person alleged to have
9 committed the violation.

10 “(3) ORDER.—

11 “(A) PENALTIES.—If the Secretary de-
12 cides, on the basis of a complaint, a person vio-
13 lated subsection (a), the Secretary shall order
14 the person to—

15 “(i) take affirmative action to abate
16 the violation;

17 “(ii) reinstate the complainant to the
18 former position with the same pay and
19 terms and privileges of employment; and

20 “(iii) pay compensatory damages, in-
21 cluding back pay.

22 “(B) COSTS.—If the Secretary issues an
23 order under subparagraph (A) and the com-
24 plainant requests, the Secretary may assess
25 against the person against whom the order is

1 issued the costs (including attorney’s fees) rea-
2 sonably incurred by the complainant in bringing
3 the complaint. The Secretary shall determine
4 the costs that reasonably were incurred.

5 “(4) JUDICIAL REVIEW AND VENUE.—A person
6 adversely affected by an order issued after a hearing
7 under this subsection may file a petition for review,
8 not later than 60 days after the order is issued, in
9 the court of appeals of the United States for the cir-
10 cuit in which the violation occurred or the person re-
11 sided on the date of the violation. The review shall
12 be heard and decided expeditiously. An order of the
13 Secretary subject to review under this paragraph is
14 not subject to judicial review in a criminal or other
15 civil proceeding.

16 “(5) CIVIL ACTIONS TO ENFORCE.—If a person
17 fails to comply with an order issued under this sub-
18 section, the Secretary shall bring a civil action to en-
19 force the order in the district court of the United
20 States for the judicial district in which the violation
21 occurred.

22 “(c) BURDENS OF PROOF.—The legal burdens of
23 proof with respect to a violation of subsection (a) shall
24 be governed by the applicable provisions of sections 1214
25 and 1221 of title 5, United States Code.

1 “(d) SUBPOENA AUTHORITY.—With respect to an al-
2 leged violation of subsection (a), the Secretary of Labor
3 may issue a subpoena for the attendance and testimony
4 of any person and the production of documentary or other
5 evidence from any person if the testimony or production
6 requested is not unduly burdensome and appears reason-
7 ably calculated to lead to the discovery of admissible evi-
8 dence.

9 “(e) POSTING REQUIREMENT.—The provisions of
10 this section shall be prominently posted in any place of
11 employment to which this section applies.”.

12 **SEC. 13. ISSUANCE OF SUBPOENAS.**

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

18 **SEC. 14. JUDICIAL REVIEW OF EPA ACTIONS.**

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

21 (1) by inserting after the comma at the end of
22 clause (D) “including a decision to deny a petition
23 by interested person to veto an individual permit
24 issued by a State,”;

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

7 (3) by striking “and (G)” and inserting the fol-
8 lowing: “(G) in issuing or approving any water qual-
9 ity standard under section 303(c) or 303(d), (H) in
10 issuing any water quality criterion under section
11 304(a), including a decision not to address any ef-
12 fect of the pollutant subject to such criterion if the
13 Administrator has or is made aware of information
14 indicating that such effect may occur, and (J)”.

15 **SEC. 15. NATIONAL CLEAN WATER TRUST FUND.**

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

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

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

24 “(b) TRANSFERS TO TRUST FUND.—There are here-
25 by appropriated to the Clean Water Trust Fund amounts

1 equivalent to the penalties collected under section 309 of
2 this Act and the penalties collected under section 505(a)
3 of this Act (excluding any amounts ordered to be used to
4 carry out mitigation projects under section 309 or 505(a),
5 as the case may be).

6 “(c) ADMINISTRATION OF TRUST FUND.—The Ad-
7 ministrator shall administer the Clean Water Trust Fund.
8 The Administrator may use moneys in the Fund to carry
9 out inspections and enforcement activities pursuant to this
10 Act. In addition, the Administrator may make such
11 amounts of money in the Fund as the Administrator de-
12 termines appropriate available to carry out title VI of this
13 Act.”.

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

17 (1) by inserting “(a) IN GENERAL.—” before
18 “‘There is’”; and

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

20 “(b) TREATMENT OF TRANSFERS FROM CLEAN
21 WATER TRUST FUND.—For purposes of this title,
22 amounts made available from the Clean Water Trust
23 Fund under section 519 of this Act to carry out this title
24 shall be treated as funds authorized to be appropriated

1 to carry out this title and as funds made available under
2 this title.”.

3 **SEC. 16. FEDERAL FACILITIES CLEAN WATER COMPLIANCE.**

4 (a) APPLICATION OF CERTAIN PROVISIONS TO FED-
5 ERAL FACILITIES.—Section 313(a) of the Federal Water
6 Pollution Control Act (33 U.S.C. 1323(a)) is amended to
7 read as follows:

8 “(a) COMPLIANCE.—

9 “(1) DEFINITION OF REASONABLE SERVICE
10 CHARGE.—In this subsection, the term ‘reasonable
11 service charge’ includes—

12 “(A) a fee or charge assessed in connection
13 with the processing, issuance, renewal, or
14 amendment of a permit, review of a plan, study,
15 or other document, or inspection or monitoring
16 of a facility; and

17 “(B) any other nondiscriminatory charge
18 that is assessed in connection with a Federal,
19 State, interstate, or local water pollution regu-
20 latory program.

21 “(2) REQUIREMENT.—Each department, agen-
22 cy, and instrumentality of the executive, legislative,
23 or judicial branch of the Federal Government that
24 has jurisdiction over any property or facility, or is
25 engaged in any activity that results, or that may re-

1 sult, in the discharge or runoff of a pollutant shall
2 be subject to, and shall comply with, all Federal,
3 State, interstate, and local substantive and proce-
4 dural requirements (including any requirement for a
5 permit or reporting, any provision for injunctive re-
6 lief and such sanctions as are imposed by a Federal
7 or State court to enforce the relief, and any require-
8 ment for the payment of a reasonable service
9 charge) concerning the control and abatement of
10 water pollution in the same manner, and to the same
11 extent, as any other person is subject to the require-
12 ments.

13 “(3) WAIVER OF SOVEREIGN IMMUNITY.—The
14 United States expressly waives any immunity other-
15 wise applicable to the United States with respect to
16 any substantive or procedural requirement, adminis-
17 trative authority, and process and sanction described
18 in paragraph (2), including immunity from process
19 in an administrative or court action seeking—

20 “(A) injunctive relief;

21 “(B) imposition of a sanction referred to
22 in this subsection;

23 “(C) enforcement of an administrative
24 order;

1 “(D) imposition of an administrative or
2 civil penalty or fine; or

3 “(E) payment of a reasonable service
4 charge.

5 “(4) ADMINISTRATIVE ORDERS AND PEN-
6 ALTIES.—The substantive and procedural require-
7 ments described in paragraph (2) include all admin-
8 istrative orders and all civil and administrative pen-
9 alties or fines, regardless of whether the penalties or
10 fines are punitive or coercive in nature or are im-
11 posed for isolated, intermittent, or continuing viola-
12 tions.

13 “(5) INJUNCTIVE RELIEF.—The United States
14 (including any agent, employee, or officer of the
15 United States) shall not be immune or exempt from
16 any process or sanction of any State or Federal
17 court with respect to the enforcement of any injunc-
18 tive relief referred to in paragraphs (2) and (3).

19 “(6) CIVIL PENALTIES.—No agent, employee,
20 or officer of the United States shall be personally
21 liable for any civil penalty under any Federal, State,
22 interstate, or local water pollution regulatory pro-
23 gram with respect to any act or omission within the
24 scope of the official duties of the agent, employee, or
25 officer.

1 “(7) CRIMINAL PENALTIES.—

2 “(A) AGENTS, EMPLOYEES, AND OFFI-
3 CERS.—An agent, employee, or officer of the
4 United States shall be subject to any criminal
5 sanction (including a fine or imprisonment)
6 under any Federal, State, interstate, or local
7 water pollution regulatory program.

8 “(B) DEPARTMENTS, AGENCIES, AND IN-
9 STRUMENTALITIES.—No department, agency,
10 or instrumentality of the executive, legislative,
11 or judicial branch of the Federal Government
12 shall be subject to a sanction referred to in sub-
13 paragraph (A).”.

14 (b) FEDERAL FACILITY ENFORCEMENT.—Section
15 309 of the Federal Water Pollution Control Act (33
16 U.S.C. 1319) is further amended by adding at the end
17 the following:

18 “(k) FEDERAL FACILITY ENFORCEMENT.—

19 “(1) COMPLIANCE ORDERS.—

20 “(A) IN GENERAL.—Whenever on the basis
21 of any information available to him or her—

22 “(i) the Administrator determines
23 that any department, agency, or instru-
24 mentality of the United States has violated
25 or is in violation of section 301, 302, 306,

1 307, 308, 311, 318, or 405 of this Act, or
2 has violated or is in violation of any permit
3 condition or limitation implementing any
4 such section in a permit issued under sec-
5 tion 402 of this Act by the Administrator
6 or by a State, or in a permit issued under
7 section 404 of this Act by a State, or any
8 requirement imposed in a pretreatment
9 program approved under section 402(a)(3)
10 or 402(b)(8) of this Act, or any require-
11 ment imposed under section 402(b)(9) of
12 this Act;

13 “(ii) the Secretary of the Army deter-
14 mines that any department, agency, or in-
15 strumentality of the United States has vio-
16 lated or is in violation of section 301 with
17 regard to discharges of dredged or fill ma-
18 terial or any condition or limitation in a
19 permit issued under section 404 of this
20 Act; and

21 “(iii) the Secretary of the department
22 in which the Coast Guard is operating de-
23 termines that any department, agency, or
24 instrumentality of the United States has
25 violated any provision of section 311 of

1 this Act or any of its implementing regula-
2 tions;
3 the Administrator or Secretary, as applicable,
4 may issue an order to assess an administrative
5 penalty for any past or current violation or re-
6 quire compliance or correction of any past or
7 current violation immediately or within a speci-
8 fied time period, or both.

9 “(B) REQUIRED TERMS.—Any order
10 issued under this subsection—

11 “(i) by the Administrator may include
12 a suspension or revocation of any permit
13 issued by the Administrator or a State
14 under sections 402 and 404 of this Act;
15 and

16 “(ii) by the Secretary of the Army
17 may include a suspension or revocation of
18 any permit issued by the Secretary of the
19 Army under section 404 of this Act; and

20 shall state with reasonable specificity the nature of
21 the violation. Any penalty assessed in the order shall
22 not exceed \$25,000 per day for each violation.

23 “(2) VIOLATION OF COMPLIANCE ORDERS.—If
24 a violator fails to take corrective action within the

1 time specified in an order issued under paragraph
2 (1)—

3 “(A) the Administrator or Secretary, as
4 applicable, may assess a civil penalty of not
5 more than \$25,000 for each day of continued
6 noncompliance with the order; and

7 “(B)(i) the Administrator may suspend or
8 revoke any permit issued pursuant to section
9 402 or 404 of this Act which is the subject of
10 the order, whether issued by the Administrator
11 or the State; and

12 “(ii) the Secretary of the Army may sus-
13 pend or revoke any permit issued pursuant to
14 section 404 of this Act.

15 “(3) EMERGENCY ORDERS AT FEDERAL FACILI-
16 TIES.—The Administrator may issue an emergency
17 administrative order to, and assess an administrative
18 penalty for violations of the order against, a Federal
19 agency under the same circumstances as an emer-
20 gency order may be issued to, and such penalty for
21 violation of such order may be assessed, against any
22 other person under this title.

23 “(4) PUBLIC HEARING.—

24 “(A) IN GENERAL.—Any order issued
25 under this subsection shall become final unless,

1 not later than 30 days after the order is served,
2 a department, agency, or instrumentality of the
3 United States named therein requests a public
4 hearing.

5 “(B) CONDUCT.—Upon a request under
6 this paragraph, the Administrator or Secretary,
7 as applicable, shall promptly conduct a public
8 hearing. Such public hearing shall be conducted
9 in accordance with section 554 of title 5,
10 United States Code.

11 “(C) SUBPOENAS.—In connection with any
12 proceeding under this subsection, the Adminis-
13 trator or Secretary may issue subpoenas for the
14 attendance and testimony of witnesses and the
15 production of relevant papers, books, and docu-
16 ments and may promulgate rules for discovery
17 procedures.

18 “(5) CONSULTATION WITH THE ADMINIS-
19 TRATOR.—No administrative order, including any
20 emergency order or field citation, issued to a Federal
21 department, agency or instrumentality under this
22 subsection shall become final until such department,
23 agency, or instrumentality has had the opportunity
24 to confer with the Administrator.

1 “(6) EXISTING COMPLIANCE ORDERS.—Nothing
2 in this subsection shall be construed to alter, modify,
3 or change in any manner any Federal facility com-
4 pliance agreement, permit, administrative order or
5 judicial order that is in effect on the effective date
6 of this subsection.

7 “(7) ACTIONS AND RIGHTS OF INTERESTED
8 PERSONS.—No administrative action which has been
9 commenced by the Administrator or the Secretary
10 under this subsection with respect to a violation
11 shall preclude a civil enforcement action under sec-
12 tion 505 of this Act for the same violation or viola-
13 tions.

14 “(8) SPECIAL RULES.—

15 “(A) PUBLIC NOTICE.—Before issuing an
16 order under this subsection, the Administrator
17 or Secretary, as the case may be, shall provide
18 public notice of and reasonable opportunity to
19 comment on the proposed issuance of such
20 order.

21 “(B) PRESENTATION OF EVIDENCE.—Any
22 person who comments on a proposed order
23 under this subsection shall be given notice of
24 any hearing held with respect to the proposed
25 order and the order. In any hearing held under

1 this subsection, such person shall have a rea-
2 sonable opportunity to be heard and to present
3 evidence.

4 “(9) CITIZEN’S CIVIL ACTION.—Any person
5 may commence a civil action on his or her own be-
6 half against—

7 “(A) any Federal agency that is alleged to
8 have violated or to be in violation of any order
9 issued by the Administrator or the Secretary
10 under this title; or

11 “(B) any Federal agency that fails, within
12 1 year of the effective date of a final order, to
13 pay a penalty assessed by the Administrator or
14 the Secretary under this subsection.”.

15 (c) DEFINITION OF PERSON.—

16 (1) GENERAL DEFINITIONS.—Section 502(5) of
17 the Federal Water Pollution Control Act (33 U.S.C.
18 1362(5)) is further amended by inserting before the
19 period at the end the following: “and includes any
20 department, agency, or instrumentality of the United
21 States”.

22 (2) OIL AND HAZARDOUS SUBSTANCE LIABILITY
23 PROGRAM.—Section 311(a)(7) of such Act (33
24 U.S.C. 1321(a)(7)) is amended by inserting before
25 the semicolon at the end the following: “and any de-

1 partment, agency, or instrumentality of the United
2 States”.

3 **SEC. 17. APPLICABILITY.**

4 Sections 101(h), 309(g)(6)(A), 505(a)(1), 505(b),
5 505(g), and 505(i) of the Federal Water Pollution Control
6 Act, as inserted or amended by this Act, shall be applica-
7 ble to all cases pending under such Act on the date of
8 the enactment of this Act and all cases brought on or after
9 such date of enactment relating to violations which oc-
10 curred before such date of enactment.

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