104TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
104–112

CLEAN WATER AMENDMENTS OF 1995

R E P O R T

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

ON

H.R. 961

together with

ADDITIONAL, SUPPLEMENTAL, AND DISSENTING VIEWS

[Including cost estimate of the Congressional Budget Office]

MAY 3, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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MAY 3, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

together with

ADDITIONAL, SUPPLEMENTAL, AND DISSENTING VIEWS

[To accompany H.R. 961]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 961) to amend the Federal Water Pollution Control Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Definition.
Sec. 3. Amendment of Federal Water Pollution Control Act.

TITLE I—RESEARCH AND RELATED PROGRAMS

Sec. 101. National goals and policies.
Sec. 102. Research, investigations, training, and information.
Sec. 103. State management assistance.
Sec. 104. Mine water pollution control.
Sec. 105. Water sanitation in rural and Native Alaska villages.
Sec. 106. Authorization of appropriations for Chesapeake program.
Sec. 107. Great lakes management.

TITLE II—CONSTRUCTION GRANTS

Sec. 201. Uses of funds.
Sec. 202. Administration of closeout of construction grant program.
Sec. 203. Sewage collection systems.
Sec. 204. Treatment works defined.
Sec. 205. Value engineering review.
Sec. 206. Grants for wastewater treatment.

TITLE III—STANDARDS AND ENFORCEMENT

Sec. 301. Effluent limitations.
Sec. 302. Pollution prevention opportunities.
Sec. 303. Water quality standards and implementation plans.
Sec. 304. Use of biological monitoring.
Sec. 305. Arid areas.
Sec. 306. Total maximum daily loads.
Sec. 307. Revision of criteria, standards, and limitations.
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Sec. 315. Marine sanitation devices.
Sec. 316. Federal facilities.

Sec. 317. Clean lakes.
Sec. 318. Cooling water intake structures.
Sec. 319. Nonpoint source management programs.
Sec. 320. National estuary program.
Sec. 321. State watershed management programs.
Sec. 322. Stormwater management programs.
Sec. 323. Risk assessment and disclosure requirements.
Sec. 324. Benefit and cost criterion.

TITLE IV—PERMITS AND LICENSES

Sec. 401. Waste treatment systems for concentrated animal feeding operations.
Sec. 402. Permit reform.
Sec. 403. Review of State programs and permits.
Sec. 404. Statistical noncompliance.
Sec. 405. Anti-backsliding requirements.
Sec. 406. Intake credits.
Sec. 407. Combined sewer overflows.
Sec. 408. Sanitary sewer overflows.
Sec. 409. Abandoned mines.
Sec. 410. Beneficial use of biosolids.
Sec. 411. Waste treatment systems defined.
Sec. 412. Thermal discharges.

TITLE V—GENERAL PROVISIONS

Sec. 501. Consultation with States.
Sec. 502. Navigable waters defined.
Sec. 503. CAFO definition clarification.
Sec. 504. Publicly owned treatment works defined.
Sec. 505. State water quantity rights.
Sec. 506. Implementation of water pollution laws with respect to vegetable oil.
Sec. 507. Needs estimate.
Sec. 508. General program authorizations.
Sec. 509. Indian tribes.
Sec. 510. Food processing and food safety.
Sec. 511. Audit dispute resolution.

TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

Sec. 601. General authority for capitalization grants.
Sec. 602. Capitalization grant agreements.
Sec. 603. Water pollution control revolving loan funds.
Sec. 604. Allotment of funds.
Sec. 605. Authorization of appropriations.
Sec. 606. State nonpoint source water pollution control revolving funds.

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Technical amendments.
Sec. 702. John A. Blatnik National Fresh Water Quality Research Laboratory.
Sec. 703. Wastewater service for colonias.
Sec. 704. Savings in municipal drinking water costs.

TITLE VIII—WETLANDS CONSERVATION AND MANAGEMENT

Sec. 801. Short title.
Sec. 802. Findings and statement of purpose.
Sec. 803. Wetlands conservation and management.
Sec. 804. Definitions.
Sec. 805. Technical and conforming amendments.
Sec. 806. Effective date.

TITLE IX—NAVIGATIONAL DREDGING

Sec. 901. References to act.
Sec. 902. Ocean dumping permits.
Sec. 903. Dredged material permits.
Sec. 904. Permit conditions.
Sec. 905. Special provisions regarding certain dumping sites.
Sec. 906. References to Administrator.

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.".

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) GRANTS TO LOCAL GOVERNMENTS.—Section 104(b)(3) (33 U.S.C. 1254(b)(3)) is amended by inserting "local governments," after "interstate agencies,".

(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 nonprofit organizations to provide technical assistance and training to rural and small publicly owned treatment works 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 to provide wastewater services to rural communities of 3,000 or less that are not currently served by any sewage collection or water 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: "; and (7) not to exceed $50,000,000 per fiscal year for each of fiscal years 1996 through 2000 for carrying out the provisions of subsections (b)(3), (b)(8), and (b)(9), except that not less than 20 percent of the sums appropriated pursuant to this clause shall be available 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 affected 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 Council 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 cooperation 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 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 $3,000,000,000.

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 "not later than 3 years after the date such limitations are established;"; 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 such Act; and

"(B) the post-mining discharges from such operation do not add pollutants to the waters of the United States in excess of those pollutants discharged 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 production 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) 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.

"(3) 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 reduce or eliminate the penalty for such violation if the permittee has made good-faith efforts both to implement the innovation and to comply with any interim limitations.

"(4) REPORT.—Not later than 1 year after the date of the enactment of this subsection, the Administrator 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.".

(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.—Notwithstanding any other provision of this Act, 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 pollution prevention measures or practices (including recycling, source reduction, and other measures to reduce discharges or other releases of pollutants 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) 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) 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.—Notwithstanding any other provision of this Act, 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 required 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.

"(6) 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 modification 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 Administrator 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 regarding designation of uses of waters by States.

"(ii) WATERS NOT ATTAINING DESIGNATED USES.—For navigable waters not attaining designated uses, 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) WATERS ATTAINING DESIGNATED USES.—For navigable waters attaining the designated use applicable to such waters for all pollutants, the Administrator shall allow a State to modify the designated use only if the State determines that continued maintenance of the water quality necessary to support the designated use will result in significant social or economic dislocations substantially out of proportion to the benefits to be achieved from maintenance of the designated use.

"(iv) 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.".

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 indigenous, or representative of indigenous, and relevant to the type of waters covered by such criteria and shall take into account the accepted analytical variability associated with such methods in defining an exceedance 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 through a field bio-assessment study that a balanced and healthy population of aquatic species indigenous, or representative of indigenous, and relevant to the type of waters exists in the waters that are affected by the discharge, and if the applicable water quality standards are met for such waters; or

"(B) if the permittee is a publicly owned treatment works, the source or cause of such toxicity cannot, after thorough investigation, be identified.".

(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:

"(D) 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 con-

trols; 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).".

(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) 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 3 years 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).".

(f) REVISION OF PRETREATMENT REQUIREMENTS.—Section 304(g)(1) (33 U.S.C. 1314(g)(1)) is amended by striking "and review at least annually thereafter and, if appropriate, revise" and insert "and thereafter revise, as appropriate,".

(g) 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. INFORMATION AND GUIDELINES.

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).".

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:

"(5) 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 20,000 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 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 location 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).".

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 expeditious 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; and

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

the approved pretreatment program shall be modified to allow the publicly owned treatment works to apply 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 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 treatment 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 technology 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 or runoff 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 instrumentality under this section shall become final until such de-

partment, 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 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: "STANDARD FOR 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) NEW POINT SOURCE CONSIDERATIONS.—In establishing a standard referred to in paragraph (1) for cooling water intake structures located at new point sources, the Administrator shall consider, at a minimum, the following:

"(A) The relative technological, engineering, and economic feasibility of possible technologies or techniques for minimizing any such adverse environmental impacts.

"(B) The relative technological, engineering, and economic feasibility of possible site locations, intake structure designs, and cooling water flow techniques.

"(C) The relative environmental, social, and economic costs and benefits of possible technologies, techniques, site locations, intake structure designs, and cooling water flow techniques.

"(D) The projected useful life of the new point source.

"(3) EXISTING POINT SOURCES.—For existing point sources, the Administrator may require the use of best technology available in the case of existing cooling water intake structures if the Administrator determines such structures are having or could have a significant adverse impact on the aquatic environment.

In establishing a standard referred to in paragraph (1) for such existing point sources, the Administrator shall consider, at a minimum, the following:

"(A) The relative technological, engineering, and economic feasibility of reasonably available retrofit technologies or techniques for minimizing any such adverse environmental impacts.

"(B) Other mitigation measures for offsetting the anticipated adverse environmental impacts resulting from the withdrawal of cooling water.

"(C) Relative environmental, social, and economic costs and benefits of possible retrofit technologies, techniques, and mitigation measures.

"(D) The projected remaining useful life of the existing point source.

"(4) DEFINITIONS.—In this subsection, the following definitions apply:

"(A) NEW POINT SOURCE.—The term 'new point source' means any point source the construction of which will commence after the publication of proposed regulations prescribing a standard for intake structures that will be applicable to such source if such standard is promulgated in accordance with paragraph (2).

"(B) EXISTING POINT SOURCE.—The term 'existing point source' means any point source that is not a new point source.".

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: voluntary 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 qual-

ity 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 a 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; and

"(E) 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 satisfactory 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 pollution 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 (j), 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 Admin-

istrator and the State jointly certify that the amounts appropriated are sufficient to meet the requirements of this section.".

(n) COASTAL NONPOINT POLLUTION CONTROL PROGRAMS.—

(1) REPEAL.—Section 6217 of the Omnibus Budget Reconciliation Act of 1990 (16 U.S.C. 1455b) is repealed.

(2) INCLUSION OF COASTAL MANAGEMENT PROVISIONS IN NONPOINT PROGRAM.—Section 319 is amended—

(A) in subsection (a)(1)—

(i) by striking "and" at the end of subparagraph (C);

(ii) by striking the period at the end of subparagraph (D) and inserting "(including State management programs approved under section 306 of the Coastal Zone Management Act of 1972); and"; and

(iii) by adding at the end the following:

"(E) identifies critical areas, giving consideration to the variety of natural, commercial, recreational, ecological, industrial, and aesthetic resources of immediate and potential value to the present and future of the Nation's waters in the Coastal Zone.";

(B) in subsection (a)(2) by inserting "any management program of the State approved under section 306 of the Coastal Zone Management Act of 1972," after "314,";

(C) in subsection (b)(2) by adding after subparagraph (I), as added by subsection (b) of this section, the following:

"(J) For coastal areas, the identification of, and continuing process for identifying, land uses which individually or cumulatively may cause or contribute significantly to degradation of—

"(i) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protected designated uses, as determined by the State pursuant to the State's water quality planning processes or watershed planning efforts; and

"(ii) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings."; and

(D) in subsection (c)(1) by inserting "or coastal zone management agencies" after "planning agencies".

(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 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.".

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 management 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 quality 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 and submit to the Administrator for approval a stormwater management program based on available information which the State proposes to implement in the first 5 fiscal years beginning after the date of submission of such management program for controlling pollution added from stormwater discharges to the navigable waters within the boundaries of the State and improving the quality of such waters.

"(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 established under subsection (i) 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 dis-

charges that are not contaminated by contact with material handling equipment or activities, heavy industrial machinery, raw materials, intermediate products, finished products, byproducts, 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 discharges 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 additional 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.—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 prevention 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.

"(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 demonstration 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), (c)(2)(E), or (c)(2)(F), 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.—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 discharge with respect to which a permit has been issued under section 402 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 requirements of subsection (b) 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) of this Act, 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) DEVELOPMENT OF STORMWATER CRITERIA.—

"(1) 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 subsection (h)(1).

"(2) INFORMATION TO BE USED IN DEVELOPMENT.—The stormwater discharge criteria to be established under this subsection—

"(A) shall be developed from—

"(i) the findings and conclusions of the demonstration programs and research conducted under subsection (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 section;

"(B) 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

"(C) 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.

"(j) 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.

"(k) REPORTS OF ADMINISTRATOR.—

"(1) BIENNIAL REPORTS.—Not later than January 1, 1996, 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 assist the States in implementation of such management programs.

"(l) GUIDANCE ON MODEL STORMWATER 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, 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.

"(m) 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.

"(n) 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.

"(o) 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.

"(p) 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.

"(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) 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) 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."; 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 prepared 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 guidance 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. An existing concentrated animal feeding operation that 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 may continue to use that natural topographic feature for waste storage regardless of its size, capacity, or previous use.".

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(b)(1)(A) (33 U.S.C. 1342(b)(1)(A)) is amended by inserting after the semicolon at the end the following: "except that in no event shall a discharge limit in a permit under this section be set at a level below the lowest level that the pollutant can be reliably quantified on an interlaboratory basis

for a particular test method, as determined by the Administrator using approved analytical methods under section 304(h);".

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 be deemed in compliance with the technology-based effluent limitation 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 be deemed in compliance with the standard under the Act.".

SEC. 405. ANTI-BACKSLIDING REQUIREMENTS.

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;

"(ii) if 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; or

"(iii) 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 waters, taking into account analytical variability; and

"(B) if, for conventional pollutants, the constituents of the conventional pollutants in the intake water are the same as 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 that does not meet the requirement of paragraph (1).

"(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 Administrator 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 exten-

sion unless the other State approves the extension or does not disapprove 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 paragraph (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 approved within 180 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 inactive 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 remediation 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.

"(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 its political subdivisions, or an Indian tribe or officers, employees, or contractors thereof; and

"(ii) any person acting in cooperation with a person described in clause (i), 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 not actively mined or in temporary shutdown at the time of submission of the remediation plan and issuance of a permit under this section.

"(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 law, 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 Administrator, 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 VEGETABLE OIL.

(a) DIFFERENTIATION AMONG FATS, OILS, AND GREASES.—

(1) IN GENERAL.—In issuing or enforcing a regulation, an interpretation, or a guideline relating to a fat, oil, or grease under a Federal law related to water pollution control, the head of a Federal agency shall—

(A) differentiate between and establish separate classes for—

(i)(I) animal fats; and

(II) vegetable oils; and

(ii) other oils, including petroleum oil; and

(B) apply different standards and reporting requirements (including reporting requirements based on quantitative amounts) to different classes of fat and oil as provided in paragraph (2).

(2) CONSIDERATIONS.—In differentiating between the classes of animal fats and vegetable oils referred to in paragraph (1)(A)(i) and the classes of oils described in paragraph (1)(A)(ii), 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. 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. 508. 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. 509. 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 agree-

ment 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) 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.".

(c) 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.".

(d) 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".

(e) 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. 510. FOOD PROCESSING AND FOOD SAFETY.

Title V (33 U.S.C. 1361–1377) is amended by redesignating section 519 as section 521 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. 511. AUDIT DISPUTE RESOLUTION.

Title V (33 U.S.C. 1361–1377) is further amended by inserting before section 521, as redesignated by section 510 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 carry-

ing 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.".

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 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,

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 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 treatment works only if—

"(1) such project is on the State's priority list under section 216 of this Act; 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 appro-

priate 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	1.0110
Alaska	0.5411
Arizona	0.7464
Arkansas	0.5914
California	7.9031
Colorado	0.7232
Connecticut	1.3537
Delaware	0.4438
District of Columbia	0.4438
Florida	3.4462
Georgia	1.8683
Hawaii	0.7002
Idaho	0.4438
Illinois	4.9976
Indiana	2.6631
Iowa	1.2236
Kansas	0.8690
Kentucky	1.3570
Louisiana	1.0060
Maine	0.6999
Maryland	2.1867
Massachusetts	3.7518
Michigan	3.8875
Minnesota	1.6618
Mississippi	0.8146
Missouri	2.5063
Montana	0.4438
Nebraska	0.4624
Nevada	0.4438
New Hampshire	0.9035
New Jersey	4.5156
New Mexico	0.4438
New York	12.1969
North Carolina	1.9943
North Dakota	0.4438
Ohio	5.0898

"States:	Percentage of sums authorized:
Oklahoma	0.7304
Oregon	1.2399
Pennsylvania	4.2145
Rhode Island	0.6071
South Carolina	0.9262
South Dakota	0.4438
Tennessee	1.4668
Texas	4.6458
Utah	0.4764
Vermont	0.4438
Virginia	2.2615
Washington	1.9217
West Virginia	1.4249
Wisconsin	2.4442
Wyoming	0.4438
Puerto Rico	1.1792
Northern Marianas	0.0377
American Samoa	0.0812
Guam	0.0587
Pacific Islands Trust Territory	0.1158
Virgin Islands	0.0576.".

(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) $2,500,000,000 for fiscal year 1996;

"(8) $2,500,000,000 for fiscal year 1997;

"(9) $2,500,000,000 for fiscal year 1998;

"(10) $2,500,000,000 for fiscal year 1999; and

"(11) $2,500,000,000 for fiscal year 2000.".

SEC. 606. STATE NONPOINT SOURCE WATER POLLUTION CONTROL REVOLVING FUNDS.

Title VI (33 U.S.C. 1381–1387) is amended—

(1) in section 607 by inserting after "title" the following: "(other than section 608)"; and

(2) by adding at the end the following:

"SEC. 608. STATE NONPOINT SOURCE WATER POLLUTION CONTROL REVOLVING FUNDS.

"(a) GENERAL AUTHORITY.—The Administrator shall make capitalization grants to each State for the purpose of establishing a nonpoint source water pollution control revolving fund for providing assistance—

"(1) to persons for carrying out management practices and measures under the State management program approved under section 319; and

"(2) to agricultural producers for the development and implementation of the water quality components of a whole farm or ranch resource management plan and for implementation of management practices and measures under such a plan.

A State nonpoint source water pollution control revolving fund shall be separate from any other State water pollution control revolving fund; except that the chief executive officer of the State may transfer funds from one fund to the other fund.

"(b) APPLICABILITY OF OTHER REQUIREMENTS OF THIS TITLE.—Except to the extent the Administrator, in consultation with the chief executive officers of the States, determines that a provision of this title is not consistent with a provision of this section, the provisions of sections 601 through 606 of this title shall apply to grants made under this section in the same manner and to the same extent as they apply to grants made under section 601 of this title. Paragraph (5) of section 602(b) shall apply to all funds in a State revolving fund established under this section as a result of capitalization grants made under this section; except that such funds shall first be used to assure reasonable progress toward attainment of the goals of section 319, as determined by the Governor of the State. Paragraph (7) of section 603(d) shall apply to a State revolving fund established under this section, except that the 4-percent limitation contained in such section shall not apply to such revolving fund.

"(c) APPORTIONMENT OF FUNDS.—Funds made available to carry out this section for any fiscal year shall be allotted among the States by the Administrator in the same manner as funds are allotted among the States under section 319 in such fiscal year.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $500,000,000 per fiscal year for each of fiscal years 1996 through 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 to provide wastewater service to the communities along such border commonly known as "colonias".

(b) FEDERAL SHARE.—The Federal share of the cost of a project carried out using funds made available under subsection (a) shall be 50 percent. The non-Federal share of such cost shall be provided by the State receiving the grant.

(c) 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.

(d) 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, fisheries 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 shall issue regulations to classify wetlands as type A, type B, or type C wetlands depending 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 application 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;

"(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 prior converted cropland;

"(iv) are fastlands; or

"(v) 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 re-

scinded 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 Government 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) SEQUENTIAL 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 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.

"(B) 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 result 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 Secretary 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; and

"(vi) 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 necessary 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 Sec-

retary 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 mitigation 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.

"(f) ACTIVITIES NOT REQUIRING PERMIT.—

"(1) IN GENERAL.—Activities undertaken in any wetlands or waters of the United States are exempt 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 facilities (including dikes and berms) that are used by concentrated animal feeding 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; or

"(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; or

"(iv) are for construction of ice pads and ice roads and for purposes of snow storage and removal.

"(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 purposes 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 pur-

pose 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) LAND AREA CAP FOR TYPE A WETLANDS.—No more than 20 percent of any county, parish, or borough shall be classified as type A wetlands. Type A wetlands in Federal or State ownership (including type A wetlands in units of the National Wildlife Refuge System, the National Park System, and lands held in conservation easements) shall be included in calculating the percent of type A wetlands in a county, parish, or borough.

"(3) 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 section 1222(j) of the Food Security Act of 1985 (16 U.S.C. 3822(j)).

"(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 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 as agricultural lands.

"(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 nonagricultural 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.

"(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; and

"(G) 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); 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 immediately. 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 commencing 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 statement 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.

"(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 nonregulatory 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) LIMITATION ON CLASSIFICATION OF CERTAIN WATERS.—For purposes of this section, no water of the United States or wetland shall be subject to this section based solely on the fact that migratory birds use or could use such water or wetland.

"(10) 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 subsection (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.

"(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 production 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) 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 '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, industrial, or residential purposes consistent with local land use planning requirements.

"(32) 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.

"(33) 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.

"(34) 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.

"(35) 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.

"(36) The term 'mitigation banking' means wetlands restoration, enhancement, preservation or creation for the purpose of providing compensation for wetland degradation or loss.

"(37) 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.

"(38) The term 'prior converted cropland' means any agricultural land that was manipulated (by drainage or other physical alteration to remove excess water from the land) or used for the production of any annual or perennial agricultural crop (including forage or hay), aquacultural product, nursery product or wetlands crop, or the production of livestock before December 23, 1985.

"(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. OCEAN DUMPING PERMITS.

(a) ISSUANCE OF PERMITS.—Section 102 (33 U.S.C. 1412) is amended—

(1) in the section heading by striking "ENVIRONMENTAL PROTECTION AGENCY"; and

(2) in subsection (a)—

(A) by striking "Administrator" each place it appears and inserting "Secretary";

(B) by striking paragraph (G) and redesignating paragraphs (A), (B), (C), (D), (E), (F), (H), and (I) as paragraphs (1) through (8), respectively;

(C) in paragraph (4), as so redesignated, by redesignating subparagraphs (i) through (iii) as subparagraphs (A) through (C), respectively; and

(D) by striking the first and second sentences following the indented paragraphs.

(b) CATEGORIES OF PERMITS.—Section 102(b) (33 U.S.C. 1412(b)) is amended by striking "Administrator" and inserting "Secretary".

(c) DESIGNATION OF SITES.—Section 102(c) (33 U.S.C. 1412(c)) is amended—

(1) by striking "Administrator" each place it appears and inserting "Secretary"; and

(2) in paragraph (3) by striking "Secretary" each place it appears and inserting "Administrator".

(d) SPECIAL RULES.—Sections 102(d) and 102(e) (33 U.S.C. 1412(d) and 1412(e)) are amended by striking "Administrator" each place it appears and inserting "Secretary".

SEC. 903. DREDGED MATERIAL PERMITS.

(a) DISPOSAL SITES.—Section 103 (33 U.S.C. 1413) is amended—

(1) in the section heading by striking "CORPS OF ENGINEERS" and inserting "DREDGED MATERIAL"; and

(2) in subsection (b)—

(A) by striking "by the Administrator" each place it appears;

(B) by striking ", with the concurrence of the Administrator,"; and

(C) 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.".

(c) WAIVERS.—Section 103(d) (33 U.S.C. 1413(d)) is amended by striking "request a waiver" and all that follows through the period at the end and inserting "grant a waiver.".

SEC. 904. PERMIT CONDITIONS.

Section 104 (33 U.S.C. 1414) is amended—

(1) by striking "Administrator or the Secretary, as the case may be," each place it appears and inserting "Secretary";

(2) in subsection (a) by inserting a comma before "after consultation";

(3) in subsection (h)—

(A) by striking "Administrator of the Environmental Protection Agency" and inserting "Secretary"; and

(B) in the last sentence by striking "Administrator determines" and inserting "Secretary determines"; and

(4) in subsection (i)—

(A) by striking "Administrator" each place it appears and inserting "Secretary";

(B) in paragraph (3) by striking "Merchant Marine and Fisheries" and inserting "Transportation and Infrastructure"; and

(C) in paragraph (4)(D) by striking "of the Environmental Protection Agency".

SEC. 905. SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES.

Section 104A (33 U.S.C. 1414a) is amended by striking "Administrator" each place it appears and inserting "Secretary".

SEC. 906. REFERENCES TO ADMINISTRATOR.

With respect to any function transferred from the Administrator to the Secretary of the Army by an amendment made by this title and exercised after the effective date of such transfer, reference in any Federal law to the Administrator shall be considered to refer to the Secretary of the Army.

PURPOSE AND SUMMARY

The purpose of the bill is to reauthorize and amend the Clean Water Act to provide a flexible, scientifically sound, and cost-effective basis on which to maintain and continue improvements in water quality.

NEED FOR LEGISLATION

The objective of the Federal Water Pollution Control Act (referred to as the Clean Water Act, CWA, or Act) is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The Act was last amended comprehensively in 1987 and most of its authorizations of appropriations expired in 1991. Funding has been provided through the annual appropriations process.

The Clean Water Act is a program that requires further direction from Congress. In general, it has worked well to provide the nation with clean, healthy water through a partnership among Federal, State and local governments and industry. However, much of the improvements in water quality achieved to date have been through the implementation of "end-of-pipe" controls on industrial and municipal point source dischargers. Additional regulation of these point sources is increasingly costly and achieves increasingly smaller marginal benefits.

Moreover, a majority of the remaining water quality problems in rivers, streams and lakes are caused by "wet weather flows," e.g., agricultural and urban runoff, and municipal and industrial storm sewer discharges. The urban streets, rural fields, and other sources that create this runoff problem are not amenable to traditional "end-of-pipe," "command-and-control" regulatory approaches. Accordingly, the current Act has not been able to effectively address the problems associated with such wet weather flows. Attempts to impose command-and-control approaches on wet weather flows have led to regulations or permits that require unattainable results or results that are attainable only at enormous costs, much of which will be borne by cities and towns.

During the seven days of hearings in February and March 1995, and at hearings held in the 103d Congress, the Committee heard extensive testimony about specific areas that need to be addressed through comprehensive Clean Water Act reauthorization legislation, including the need to (1) provide relief from unfunded mandates, (2) develop better approaches to control of pollution from nonpoint and stormwater runoff and other wet weather flows, (3) provide additional flexibility and an increased State and local role in implementation of the Act, (4) provide financial and regulatory relief to small communities, (5) incorporate risk assessment and cost-benefit analysis into the standard setting process, (6) ensure that standards are based on sound science, and (7) comprehensively reform the regulatory process for permitting activities that take place in wetlands.

UNFUNDED MANDATES

The Committee must support efforts to provide State and local governments relief from the impacts of unfunded mandates. On March 23, 1995, President Clinton signed into law the Unfunded Mandates Reform Act of 1995. However, this Act does not address the impacts of unfunded mandates in existing law. During the debate on the Unfunded Mandates Reform Act, the Clean Water Act was cited as placing the most costly unfunded mandates on local governmental entities.

The National Association of Counties estimates that the Clean Water Act resulted in unfunded mandates costing counties $1.2 billion in 1993, and will result in unfunded mandates costing $6.5 billion from 1994 to 1998. In a 1993 survey on the impact of unfunded federal mandates on America's counties, conducted by Price Waterhouse, counties particularly cited the Clean Water Act's inflexible procedures and "cookie-cutter" approach, regardless of local conditions, as a reason for the size of the Clean Water Act's unfunded mandates. Counties also cited (1) the need to build and operate "hugely expensive wastewater treatment plants" to meet secondary treatment requirements, (2) impracticable stormwater regulations, (3) "sludge regulations that require wastewater treatment plant biosolids to be treated, then limits their disposal" and (4) "wetlands regulations that prohibit the cleaning of some drainage ditches without a permit from the Corps of Engineers," as reasons for the expense and burden imposed by the Clean Water Act.

The United States Conference of Mayors estimates that the Clean Water Act resulted in unfunded mandates costing cities $3.6 billion in 1993 and will result in unfunded mandates costing $29.3 billion from 1994 to 1998. Sadly and ironically, in response to a question in a 1993 survey conducted by Price Waterhouse on the impact of all Federal unfunded mandates on United States cities that asked what municipal projects had been delayed or forgone due to the need to divert resources to meet costly federal mandates, many cities responded that they were unable to make needed improvements in their sewer system infrastructure. By failing to maintain sewer systems, these communities are likely to face even more expensive costs associated with correcting infiltration or overflow problems associated with aging sewer systems. In addition, delaying or forgoing projects to extend sewer systems to households now serviced by septic tanks could result in impairment of water quality associated with failing septic tanks. Accordingly, Federal mandates are forcing communities to make funding choices that can be detrimental to the environment.

The bill addresses unfunded mandates by providing increased funding to meet Clean Water Act mandates an by providing regulatory relief by increasing both the flexibility and cost-effectiveness of the Act. Specifically, the bill authorizes $2.5 billion a year from fiscal year 1996 through fiscal year 2000 for capitalization grants to States for the State Revolving Loan Fund (SRF). The bill also authorizes $500 million per year for a SRF dedicated to addressing nonpoint sources of pollution. The bill will double (to $150 million a year) previously authorized levels for grants to States for administering and enforcing water pollution control programs. The bill establishes a $150 million a year grant fund for water infrastructure improvements for small communities and a $150 million a year grant fund for coastal localities, contingent on full funding of the SRF.

NONPOINT SOURCE DISCHARGES

Nonpoint source discharges include runoff from rural fields, urban streets, and other areas. During consideration of H.R. 961, the Committee heard testimony stating that it is not feasible to collect and treat this runoff prior to discharge. Instead, the most effec-

tive method of control is the prevention of pollution in runoff through management practices and measures. However, causes and the nature of runoff are extremely site-specific. Accordingly, a top-down approach for the development and implementation of management practices and measures is not appropriate.

The Committee also heard testimony regarding the controversy and criticism generated by section 6217 of the Coastal Zone Management Program. Enacted as part of the Omnibus Budget Reconciliation Act of 1990, section 6217 creates a separate coastal nonpoint source management program administered by both the United States Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA). This separate program addresses the same nonpoint source runoff problem that is addressed under section 319 of the Act. As a result, landowners in coastal areas are subject to two different regulatory programs implemented by as many as three different regulatory offices, all to address the same runoff. In addition, the Coastal States Organization has criticized the section 6217 coastal nonpoint source program as an inflexible program with unrealistic time frames that does not allow States to target resources to impaired waters. To eliminate unnecessary bureaucracy, ensure that landowners are not subject to conflicting regulatory requirements, and to provide States with flexibility to target resources, the bill repeals section 6217 and folds it into the section 319 nonpoint source program by requiring identification of impaired or threatened coastal areas within that program.

The bill strengthens the existing section 319 nonpoint source program by authorizing $1 billion over five years for State program grants and establishing a new State revolving loan fund that is dedicated to control of nonpoint sources and is capitalized at $2.5 billion over five years.

The bill requires States to develop and implement nonpoint source management programs that must include goals and milestones for achieving water quality standards as soon as practicable but no later than 15 years from the date of program approval. If a State does not develop an approvable program, EPA must develop and implement a program for the State.

The bill requires EPA to develop guidance on model management practices and measures. The Committee expects, however, that States will work with conservation districts and other local groups to tailor management measures to best address specific situations and to rely first on voluntary measures. States also have the authority to require enforceable measures for the control of nonpoint source pollution. However, the bill expresses the belief that nonpoint source programs should be built upon a foundation of voluntary initiatives that represent the approach most likely to succeed in achieving the objectives of the Act.

STORMWATER

The current stormwater permitting program at section 402(p) of the Act was added in 1987. This section required industrial facilities and municipalities with populations over 250,000 to obtain permits for stormwater discharges by February 4, 1991, and municipalities with populations over 100,000 to obtain permits by Feb-

ruary 4, 1993 (collectively, Phase I dischargers). However, EPA did not promulgate its stormwater permit regulations until November 1990. EPA administratively extended the deadline by which such dischargers were to have filed individual permit applications or obtained coverage under a general permit to October 1, 1992 (which extension was subsequently approved by Congress).

The entire permit application process has been very complex and confusing for both regulators and the regulated community. Not knowing how to regulate stormwater, EPA required extensive data collection and information in permit applications. As a result, according to the February 9, 1995, testimony of Mr. Stephen John, on behalf of the National League of Cities, before the Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, the average cost to a city of a Phase I stormwater permit application is $625,000. According to the Price Waterhouse survey of the impact of federal unfunded mandates on cities, Tulsa, Oklahoma's stormwater permit application cost $1.1 million. As of May 1994, only 24 municipal stormwater permits had actually been issued.

Approximately 60,000 industrial sources, at EPA's urging, opted to apply for a stormwater permit under EPA's group permit application process. These entities spent approximately $150 million to collect the data necessary to put those applications together. However, EPA then decided not to issue a group application; segregated 700 groups into 29 sectors in a manner that combined groups with very different stormwater discharges; and has proposed (but has not yet issued) 29 multi-sector permits.

The purpose and requirements of stormwater discharge permits remain unclear. The statute currently requires permits for industrial discharges to meet all applicable requirements of sections 402 and 301. Permits for municipal stormwater discharges are required to reduce the discharge of pollutants to the maximum extent practicable. Compliance with these requirements is to be achieved no later than three years from the date a permit is issued.

To meet the statutory deadlines, most industrial facilities sought coverage under State general stormwater permits, which require stormwater pollution prevention planning. Some individual permits do have numerical effluent limitations. Similarly, some municipal permits require management practices and measures to reduce pollution, but others include numerical effluent limitations, which are currently unachievable.

The EPA's own estimate of costs to municipalities to comply with the current stormwater permitting requirements of the Clean Water Act, is between $3.4 billion and $5.3 billion annually. If current law is interpreted, as it is by some States, to require stormwater discharges to meet numerical limits based on fishable, swimmable water quality standards, the National League of Cities estimates the cost of controls necessary to meet those limits to be over $1 trillion.

Through the exercise of data collection and the confusion of permitting, both regulators and the regulated community learned that a bureaucratic permitting framework, federally mandated controls, and end-of-pipe limitations are not appropriate for control of stormwater runoff. Accordingly, the Phase I permitting program

has resulted in extraordinary expenditures of time and resources, with minimal environmental benefit beyond that achieved through pollution prevention plans.

Since October 1, 1994, an additional 7 million facilities and thousands of communities (Phase II dischargers) have been potentially subject to this broken program. Accordingly, rapid legislative action is needed to fix the stormwater management program.

As expressed by participants in meetings held on the stormwater program by the Rensselaerville Institute in 1992 and 1993, the most appropriate fix is one which provides for flexible, site-specific, pollution prevention measures, not nationally mandated controls:

> States feel that they have more knowledge of the industrial risks within their boundaries and know what is needed to bring those risks into compliance. A number of focus groups cited the uselessness of having EPA develop requirements for any given industry when it did not understand specific industries.
>
> [W]orking in partnership with States and permittees rather than through a "command and control" relationship could get the program in place more quickly and maximize its effectiveness.

U.S. EPA, Report on the EPA Storm Water Management Program, Vol 1, at 18 (Oct. 1992) (EPA830–R–92–001).

> Much wisdom about storm water controls are not readily generalizable.
>
> Pollution prevention should be emphasized.
>
> EPA needs to allow State and local flexibility to address priorities as they have identified them.

U.S. EPA, Office of Water, EPA Group Involvement Project, at 11–12 (Rensselaerville Institute) (Sept. 1993).

At the Rensselaerville Institute meetings, two different structures for stormwater programs were discussed: (1) A traditional national program where EPA provides mandates and the States and localities attempt to meet them, and (2) a decentralized program which identifies a national performance target and allows States to develop programs to meet that target.

The bill adopts the latter approach by replacing the current section 402(p) permitting program with new section 322 State stormwater management programs. The bill requires States to develop stormwater management programs within four years and to meet the goal of attainment of water quality standards for stormwater within 15 years of program approval. To meet that goal, States have the flexibility to target receiving waters and sources of stormwater discharges. The premise of the program is that pollution prevention measures are most likely to result in attainment of the goal of achieving water quality standards. Accordingly, State controls begin with enforceable pollution prevention plans and may proceed to general and site-specific permits as determined to be necessary by the State.

Recently, EPA proposed a "fix" to its stormwater permit program, which would delay permit applications for Phase II dischargers until August 2, 2001, and adjust the requirements for Phase II dis-

chargers through a negotiated rulemaking. 60 Fed. Reg. 17950 (Apr. 7, 1995). Under its proposal, EPA may target particular Phase II sources for permit applications sooner than 2001. This proposal leaves in place the current stormwater permitting program both for Phase I sources and for those Phase II sources that EPA targets for early permits.

In contrast, the bill reforms the stormwater program for both Phase I and Phase II sources and will bring more sources under control in a shorter time frame. In addition, by providing a hierarchy of control measures, the bill creates an incentive for facilities to achieve improvements as soon as possible, to avoid a State determination that additional controls on the facility are necessary. Accordingly, the approach taken by the bill is both more cost-effective and better for the environment than either current law or EPA's proposal.

EPA's "fix" was negotiated with the Natural Resources Defense Counsel (NRDC), which threatened to sue EPA for its failure to impose its stormwater permit program on the 7 million facilities that have been potentially subject to the stormwater permit program since October 1, 1994. EPA did not consult various affected parties until after it had reached its agreements with NRDC. Those affected parties strongly oppose EPA's "fix."

On February 16, 1995, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, and the National Association of Flood and Stormwater Management Agencies wrote to EPA Assistant Administrator for Water, Robert Perciasepe, to express their concerns over EPA's proposal:

> On behalf of the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, and the National Association of Flood and Stormwater Management Agencies, we are writing to express our very serious concerns about the Agency's proposed interim final rule on stormwater.
>
> * * * * * * *
>
> Third, we have significant problems with the process EPA is proposing. We cannot endorse a process that does not, and cannot resolve our major problem with the stormwater management program—the requirement to meet numerical effluent limits. As EPA knows, and as NRDC has publicly admitted, there are no strategies, technologies or methods known or available that will assure the attainment of water quality standards in stormwater runoff. Absent the ability to address this pivotal issue, we consider it a disservice to all of our members to engage in a process that can only result in cosmetic changes with no ability to bring cost effectiveness and "common sense" to the program. We would be irresponsible to accept a process that has the potential to subject our members to a burdensome and costly mandate determined by those who have neither the responsibility for implementing nor financing such a mandate.
>
> * * * * * * *

> Rather than proposing to broaden the program, EPA should be requesting funding to determine whether the objectives of the stormwater program are achievable and if so how and at what cost relative to the benefits. EPA should be asking Congress for immediate action to delay further expansion of the program to additional communities.

The new State stormwater management program created by section 322 of the bill addresses the concerns of these public sector groups.

FLEXIBILITY AND INCREASED STATE ROLE

Many parties testified on the need to increase State and local flexibility to prevent the Act from imposing "one-size-fits-all" standards and requirements that do not reflect regional and local differences. Flexibility is necessary to achieve the greatest environmental benefits from scarce resources.

State organizations also have communicated to the Committee the need to give States increased flexibility and a greater role in implementing the Act to allow States to address real risks in a more cost-effective manner.

In its recent report to Congress on its review of EPA's role in setting the nation's environmental priorities the National Academy of Public Administration (NAPA) endorsed both increased flexibility and an increased State role in program implementation. In particular, the NAPA report recommended that both EPA and Congress give more responsibility and decisionmaking authority to States and localities.

The bill responds to this concern in a variety of ways. It allows States to take into account the unique nature of streams in arid areas when establishing water quality standards. This flexibility addresses concerns raised by cities in Arizona and other arid areas that are faced with illogical requirements to meet water quality standards developed for perennial streams, or to monitor for nonexistent pollutants in dry stream beds to develop a stormwater permit application.

The bill allows EPA or States to modify technology-based permit requirements to allow dischargers to take pollution prevention measures or to engage in pollution trading, provided there is reduction in overall discharges and a net environmental benefit. This approach is endorsed in the recent NAPA report. NAPA recommends that EPA be given the authority to allow facilities to go "beyond compliance" to implement multi-media pollution control measures that depart from technology standards. NAPA predicts that the benefits of such flexibility in terms of risk reduction and efficiency would be substantial.

The bill also provides relief from in the application of secondary treatment requirements for municipal wastewater treatment facilities that discharge from ocean outfalls. This flexibility addresses concerns expressed by communities faced with the prospect of spending billions of dollars for secondary treatment that will provide questionable added environmental benefit.

The bill allows municipal treatment works to impose local pretreatment limits on facilities that introduce pollutants into the treatment works, in lieu of national categorical pretreatment standards, provided the treatment works demonstrates that it will remain in compliance with its effluent limits, sludge quality standards, air emissions limits, and all other applicable State requirements. Thus, the bill provides relief from otherwise redundant treatment that may occur if a facility must install equipment to meet national categorical pretreatment standards before discharging to a POTW that already has established local pretreatment limits to prevent pass-through of toxics and already adequately treats the indirect discharger's wastes.

The nonpoint source and stormwater programs discussed above also maximize State flexibility to fashion their State programs to meet the national goal of attainment of water quality standards.

SMALL COMMUNITIES

The impacts of Clean Water Act mandates fall particularly hard on small communities. Several provisions of the bill relating to funding, technical assistance, and regulatory relief address this concern.

Relating to funding, the bill provides up to $250,000,000 in grants for wastewater treatment plants at hardship coastal communities and communities with a population of 75,000 or fewer. The bill requires EPA to issue guidance on simplified procedures for communities with populations of 20,000 or fewer to obtain assistance from the SRF. Disadvantaged communities are eligible for extended repayment schedules of up to 40 years and negative interest rates as low as negative 2% on SRF loans. States may use up to 2% of SRF grants for technical assistance to small communities.

The bill establishes a technical assistance "circuit rider" program for rural and small publicly owned treatment works (POTWs) and authorizes $10,000,000 for this program.

The bill provides regulatory relief by allowing EPA or a State to modify secondary treatment requirements for POTWs serving communities with a population of 20,000 or fewer if the effluent is from domestic users and the treatment works has an alternative treatment system that is equivalent to secondary treatment or that provides an adequate level of protection. With this amendment, the Committee intends to allow small communities to utilize alternative treatment systems such as constructed wetlands, recirculating sand filters, oxidation lagoons, and other natural land-based and water-based systems to meet the goals of secondary treatment. Again, the NAPA report supports this type of flexibility by recommending that if a city or county can demonstrate that it can attain or exceed required levels of environmental quality or risk reduction by non-traditional means, a State should be able to approve a plan that achieves this and waive the regulatory requirements that make less sense for the community.

In addition, the provisions of the bill that (1) codify EPA's Combined Sewer Overflow Policy to allow permits and schedules for compliance with water quality standards from such discharges to be modified to allow for long-term control strategies of up to 15 years, and, (2) require EPA to develop a control policy for sanitary

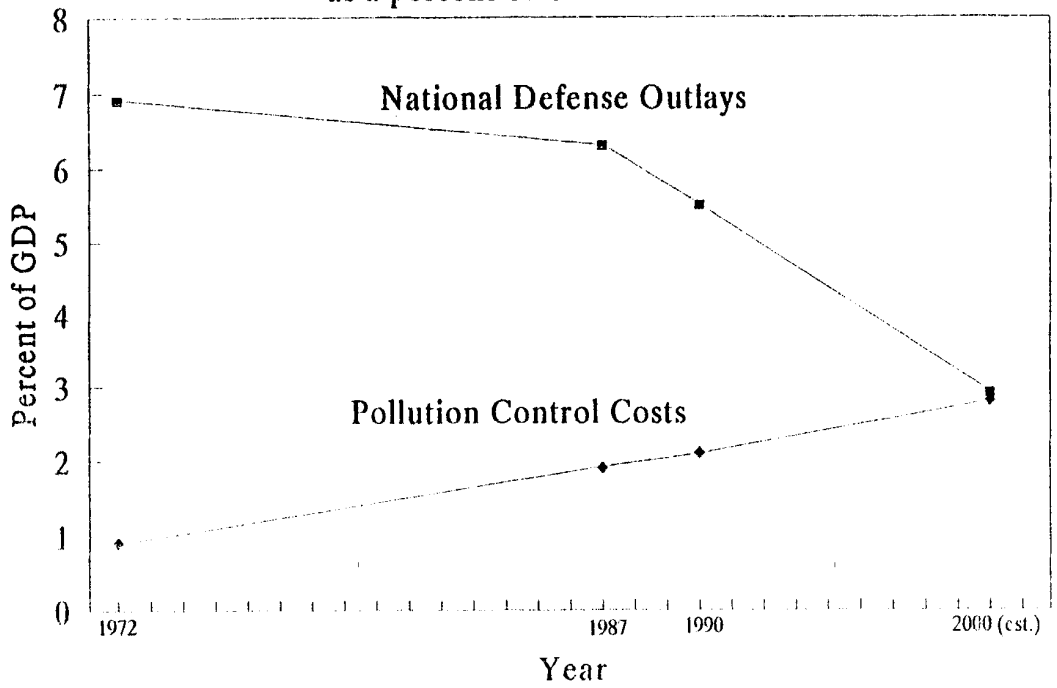
overflows (SSOs), both provide interim relief that is particularly important for small communities. Finally, the stormwater provisions of the bill reform the stormwater program so stormwater discharges from communities with populations under 100,000 will be regulated under new State Stormwater Management Programs rather than the current stormwater permitting program. By repealing section 402(p), the bill ensures that small communities are no longer subject to enforcement actions and citizen suits for failure to have a stormwater discharge permit.

RISK ASSESSMENT AND COST-BENEFIT ANALYSIS

In the last twenty-five years, the cost to our citizens of complying with environmental regulation has risen dramatically. Today, it is estimated that each American household, on average, expends $1,500 each year for environmental protection. These costs are expected to rise. Under existing legislative requirements, society's pollution control costs are expected to equal federal defense spending by the year 2000 (see Figure 1). Approximately a third of these costs (the most recent EPA estimate is $64 billion) are attributable to Clean Water Act requirements.

Figure 1. Defense vs. Pollution Control Spending

as a percent of GDP: 1972 to 2000



Sources: Office of Management and Budget and Environmental Protection Agency

With resources of this magnitude being obligated to protect our nation's water quality it is extremely important that policy makers (1) have information that is based on sound scientific analyses of potential risks to public health and the environment, and (2) weigh the costs of proposed Clean Water Act regulations against their benefits before they are promulgated. Unfortunately, the current Clean Water Act not only does not encourage these activities but, in some cases, it precludes them. As Senator Daniel P. Moynihan has stated, "Truth be told, I suspect that environmental decisions have been based more on feelings than on facts."

On February 28, 1995, by a vote of 286 to 141, the House of Representatives passed H.R. 1022, the Risk Assessment and Cost-Benefit Act of 1995, placing general requirements on regulatory agencies to perform risk assessments and benefit-cost analyses before promulgating significant regulations. The Committee endorses the application of H.R. 1022 requirements to new Clean Water Act regulations and has adopted, in sections 323 and 324 of this bill, complementary provisions that tailor H.R. 1022 requirements to Clean Water Act programs. The Committee believes these provisions will promote sound regulatory decisions and achieve a more rational and coherent allocation of society's limited resources.

SOUND SCIENCE

The Committee also heard repeatedly of the need to ensure that Clean Water Act standards and requirements are based on sound scientific evidence and principles. One example that was brought to the Committee's attention repeatedly is the need to update EPA's criteria documents that are used as the basis for setting State water quality standards.

Many EPA criteria, particularly those for metals, are based on outdated scientific assumptions. To address this concern, the bill requires EPA to update all of its water quality criteria within 5 years as necessary to certify that the criteria are based on the latest and best scientific knowledge, beginning with metals, which must be updated within one year.

WETLANDS

Section 404 of the Clean Water Act was originally designed to regulate the discharge of dredged or fill material into "navigable waters" at specified disposal sites. However, over time (and without significant change in statutory authority) the scope of the section 404 program, especially in terms of the types of activities regulated and the geographical extent of jurisdiction, expanded well beyond the original congressional intent. As a result of a myriad of judicial interpretations and administrative decisions, the program has become one of the most complex, controversial and burdensome aspects of the Clean Water Act. As a result, the program suffers from lack of public understanding, widespread opposition, and wide-ranging calls for reform.

At the same time, the nation has come to better understand and appreciate the benefits to the aquatic environment that could be achieved under section 404, especially through preservation of truly valuable wetlands functions. Unfortunately, the program as it now

exists often results in extraordinary delays and costs; a disregard of private property rights; overzealous and inconsistent application by the government; a lack of public awareness of and input to changing government policies; and bickering among the Federal agencies running the program.

Title VIII of the bill will assure that the nation's truly valuable aquatic resources are preserved and that regulatory burdens on activities that are recurring in nature and have minor impacts will be reduced or eliminated. Reforms include the following measures.

Landowners who have their property devalued by regulatory actions will be compensated (paid from the regulatory agencies' budgets), consistent with H.R. 925, passed by the House of Representatives on March 3, 1995.

The fact that not all wetlands are of equal value will be taken into consideration in making regulatory decisions. A high degree of protection will be given to the most valuable wetlands, but low-value wetlands will not be subject to Federal permits. In fact, the type of activities occurring in wetlands that are regulated will actually be broadened to assure that valuable wetland resources are afforded a high degree of protection.

States will have expanded opportunities and incentives to assume all or part of the program and State and local resource management programs will be given greater weight.

Procedural reforms, agency disclosure requirements, and administrative appeals will streamline the process, assure better public understanding and opportunity for input, and assure fairness to applicants.

Existing provisions intended to minimize or exempt minor, routine activities will be updated and expanded.

Management of the program will be concentrated in a single agency for increased consistency, expedited reviews, and accountability.

NAVIGATIONAL DREDGING

As with wetlands regulation, the regulatory process for navigational dredging has degraded to the point that such work is delayed for years, often while agencies argue over details having little significance.

Title IX of the bill modifies the regulatory provisions of the Ocean Dumping Act to assign responsibility for implementing those provisions to the Secretary of the Army, acting through the Chief of Engineers, consistent with the approach taken in Title VIII. Procedures for navigational dredging will be streamlined while preserving existing public review and environmental safeguards.

DISCUSSION OF THE COMMITTEE BILL (H.R. 961) AND SECTION-BY-SECTION ANALYSIS

TITLE I—RESEARCH AND RELATED PROGRAMS

Section 101. National goals and policies

Section 101 of the bill identifies additional national goals and policies of the Clean Water Act. These additional goals and policies embody many of the general themes throughout H.R. 961: devolu-

tion and deference to State and local governments, increased emphasis on risk-based and market-based approaches, and more resources toward nonpoint and other "wet weather flow" issues.

Subsection (a) adds nonpoint source pollution goals and policies by stating that it is the national policy that programs, including public and private sector programs using economic incentives, for the control of nonpoint sources of pollution, including stormwater, be developed and implemented in an expeditious manner so as to enable the goals of the Act to be met through the control of both point and nonpoint sources of pollution.

In endorsing economic incentives and voluntary initiatives as viable options to control nonpoint sources, the Committee was particularly mindful of recommendations soon to be formally announced by the National Forum on Nonpoint Source Pollution. Convened over a year ago by the Conservation Fund and the National Geographical Society, the Forum includes prominent environmentalists and EPA senior management as well as Governors with leadership roles in the National Governors Association, agribusiness executives, and farmers. The Forum, recognizing the limited applicability of "command-and-control" regulations to diffuse sources of contaminated runoff, recommends that economic incentives, voluntary initiatives and education play leading roles in a revitalized national effort to curb excessive nonpoint source pollution.

A few examples from the Forum's recommendations illustrate the types of economic or market "incentives" that could be employed to reduce nonpoint source pollution. Incentives can be defined to include actions or policies which either encourage and reward, or discourage and penalize, certain behavior but which, unlike regulations, do not legally force or prohibit it. One such Forum-proposed market incentive is the nonpoint source-oriented water quality monitoring which section 102 of the bill calls for EPA and cooperating agencies to conduct. Other examples include preferential lending rates by financial institutions, preferential premiums by insurance carriers, and preferential property tax rates by local governments reserved for agricultural or other nonpoint enterprises that implement "best management practices" to minimize nonpoint pollution. Another example is the pollution reduction "trading" agreement between a point and nonpoint source authorized in section 302 of the bill.

Subsection (b) addresses the respective roles of State, Tribal, and local governments in implementing the statute by stating that it is the national policy to recognize, support and enhance the role of the State, Tribal and local governments in carrying out the purposes of the Act. Generally, most of the success of the Clean Water Act depends on a "bottom-up" rather than "top-down" approach to water pollution control.

Subsection (c) States that it is the national policy to encourage reclamation and beneficial reuse of wastewater and biosolids. H.R. 961, like previous reauthorization bills, recognizes the importance of and need for wastewater reclamation and beneficial reuse. The beneficial recycling of "biosolids" (a new term used in the bill and to be included in amended section 405 of the Act) is an environmentally and scientifically sound practice that, among other things, can conserve water and improve soil fertility.

Subsection (d) states that it is the national policy to encourage water use efficiency. H.R. 961, like the existing Clean Water Act, recognizes that water use efficiency and water conservation can be integrally related to water quality. The Committee has received an abundance of testimony over the years from wastewater treatment officials, water quality regulators, environmental organizations, and others on this issue. H.R. 961 encourages, but does not require, water use efficiency.

Subsection (e) states that it is the national policy that the development and implementation of water quality protection programs pursuant to this Act be based on scientifically objective and unbiased information concerning the nature and magnitude of risk and maximize net benefits to society in order to promote sound regulatory decisions and promote the rational and coherent allocation of society's limited resources. Sections 323 and 324 of the bill implement this policy by requiring EPA to perform risk assessments and to certify that regulations, other than water quality standards and criteria, maximize net benefits. Recognizing that the overall objective of the statute is the restoration and maintenance of the chemical, physical, and biological integrity of our nation's waters, the bill only requires that the costs of EPA developed water quality standards be reasonably related to the benefits (including, of course, achieving the objective of the statute). It does not require that costs be taken into account in establishing water quality criteria. It also does not require that the quantified benefits exceed the quantified costs.

Section 102. Research, investigations, training, and information

National Programs. Section 102(a) provides that national programs created for the prevention, reduction and elimination of pollution, in cooperation with appropriate Federal, State, and local agencies, are to conduct, promote, and encourage monitoring and measurement of water quality. These programs are to employ means and methods which will assist Federal, State and local agencies to identify relative contributions of particular nonpoint sources into those watersheds which are significantly affected by nonpoint sources of pollution.

Based upon a recommendation of the National Forum on Nonpoint Source Pollution, the bill calls upon EPA and cooperating agencies at all levels of government to deploy water quality monitors in nonpoint source-influenced watersheds so that these monitors can help to identify the relative contributions of significant individual nonpoint sources. Most existing monitors were not sited with this objective in mind. The potential value of this approach is great and the need enormous. Without the most rudimentary information to distinguish sources which are significant contributors to water quality problems in a watershed from those which are not, both individual source owners and public officials have a limited foundation on which to base the voluntary actions, incentive measures, or regulation which may be appropriate. The Forum considered an example in the Midwest where the availability of such source-specific information surprised all concerned by showing one source to be the main contributor to the watershed's water quality

problem—prompting the source owner to undertake voluntary corrective action.

Grants to Local Government. Section 102(b) makes local governments eligible for grants under Section 104(b)(3) of the CWA. Local entities are key members to a successful partnership in combatting water pollution.

Technical Assistance for Rural and Small Treatment Works. The Committee recognizes the financially burdensome situation facing the rural and small treatment works of our nation in their efforts to improve the water quality of the communities which they serve. Section 102(c) authorizes the EPA to make grants to nonprofit organizations for the purposes of providing technical assistance and training to rural and small, POTWs through a "circuit rider" program modelled after the "circuit rider" program for drinking water systems under the Safe Drinking Water Act. The Committee intends, for purposes of this program, that "rural and small" shall mean communities with populations of 20,000 or less. Technical assistance is important to ensure the effective use of scarce funding, and can lead to less costly resolutions to water quality problems. Additionally, for the purposes of providing a complete and thorough support program, these organizations are directed to disseminate information to rural, small and disadvantaged communities with respect to the construction and operation of treatment works.

Wastewater Treatment in Impoverished Communities. Section 102(d) authorizes $50 million per year for fiscal years 1996 through 2000 for EPA to award grants to the States for funding the planning, design and construction of POTWs in small, impoverished communities of 3,000 people or less that lack centralized sewage treatment systems and are severely economically disadvantaged.

In communities with these circumstances, the committee believes the award of federal grant monies is justified for the protection of human health and the environment, and as further insurance for the Government's investment, grant monies may be used for training, technical assistance and educational programs relating to the operation and maintenance of such sanitation services.

Despite enactment of the Federal Water Pollution Control Act of 1972 and the expenditure of billions in federal funds for the construction of OPTWs, thousands of small communities still are not served by central wastewater treatment facilities today. Many small impoverished communities lack the resources even to repay low or zero-interest loans under the current SRF structure. Without financial assistance, untreated human sewage will continue to flow from pipes and seep from poorly functioning septic systems and privies, posing human health and environmental risks.

The Committee anticipates working closely with the Administrator to develop appropriate criteria regarding "severely economically disadvantaged."

Authorization of Appropriations. Section 102(e) demonstrates the Committee's recognition of the importance of adequate funding to continue research, investigation and training in the areas of pollution prevention; and ensures that sound scientific information is available to all communities for addressing pollution problems. For instance, these funds could be used for research and technical guidance to reduce pollution from stormwater. This provision author-

izes $50 million per year for fiscal years 1996 through 2000 for grants to agencies, institutions, organizations, and individuals for the purposes of research, investigation, experiments, training, relating to the causes, effects, extent, prevention, reduction, and elimination of pollution. One such recipient could certainly include the Water Environmental Research Foundation. These grants also are to be used for providing technical assistance to rural and small treatment works, except that no less than 20 percent of these sums shall be made available for providing technical assistance to rural and small treatment works.

Section 103. State management assistance

Section 103 authorizes $150 million per year for fiscal years 1996 through 2000 under section 106 of the Act to assist States in administering State water pollution control programs and allowing the use of such funds to finance studies and projects on an interstate basis. This authorization is twice the amount historically authorized under this section. By this increase the Committee recognizes the Federal government's responsibility to fund currently mandated Clean Water Act requirements and support the additional burdens required under this legislation, such as the development and implementation of stormwater management programs under section 322, and the administration of State-delegated wetlands permitting programs under section 404.

Section 104. Mine water pollution control

Section 104 establishes a demonstration program to illustrate the efficacy of measures to be used for abatement and treatment of the effects of acidic and other toxic mine drainage. The purpose of these measures is to restore the biological integrity of waters within the areas affected by past coal mining practices. Both States and Federal entities may apply for grants pursuant to this section.

Section 105. Water sanitation in rural and Native Alaska villages

Section 105 authorizes $25 million, to be distributed through grants by the Administrator, for the purposes of developing and constructing sanitation facilities for rural and Native Alaska villages; and for providing training, technical assistance and educational programs relating to these sanitation services. Additionally, the funds may also be used for reasonable costs of administering and managing the grants; however, funds used for costs should not exceed four percent of the grant.

Section 106. Authorization of appropriations for Chesapeake program

Section 106 authorizes $3 million per year for fiscal years 1996 through 2000 for the Chesapeake Bay Program, and $18 million per year for fiscal years 1996 through 2000 for interstate development plan grants under the Chesapeake Bay program.

Section 107. Great Lakes management

Great Lakes Research Council. Section 107(a) establishes a council to promote the coordination of Federal Great Lakes research activities. The Great Lakes are unique and valuable national asset as

one of the largest fresh water repository systems in the world, supporting a vast ecosystem. The Great Lakes not only provide an important source of drinking water for the region, but also provide recreational and industrial opportunities for the nation. The council will facilitate State and Federal efforts to preserve the integrity of the Great Lakes System through the goals of the Great Lakes Water Quality Agreement.

Consistency of Programs With Federal Guidance. Section 107(b) amends section 118(c)(2)(C) of the Act by adding a new sentence to provide that, for purposes of the Great Lakes Initiative, a State's standards, procedures and policies shall be consistent with EPA guidance if they are based on scientifically defensible judgments and policy choices made by the State. These standards, procedures and policies should be made by the State after considering the guidance, and should provide an overall level of protection comparable to that provided by the guidance, taking into account the specific circumstances of the State's waters.

Currently, section 118(c)(2) of the CWA directs EPA to publish proposed water quality guidance for the Great Lakes System. Within two years after the final guidance is published by EPA, Great Lakes States must adopt water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System, which are consistent with such guidance. If a State does not do so within two years, EPA shall promulgate them for that State.

On March 13, 1995, EPA issued the Final Water Quality Guidance for the Great Lakes System, also known as the "Great Lakes initiative" or "GLI." (60 Fed. Reg. 15366, March 23, 1995). Many witnesses testified that the final GLI goes considerably beyond the statutory requirement of section 118(c)(2) that EPA issue "guidance," and restricts the ability of the States to make their own judgments about the most effective way to achieve the laudable goal of protecting the Great Lakes System.

H.R. 961 clarifies the intent of the statutory requirement that State's adopt water quality programs for a State "consistent with GLI." A State's program would be considered "consistent" if (1) it was based on scientifically defensible judgments and policy choices made by the State after taking the GLI into account, and (2) if it provides an overall level of protection comparable to that provided by the GLI. It is not intended, nor should the effect of the amendment be, that any Great Lake State be relieved of its responsibility to develop and implement an effective water quality program. One of the principles behind the GLI is the benefit of uniformity among the various Great Lakes States.

However, the current GLI places an extremely high burden on a State that proposes to adopt a requirement in its water quality program that differs from the corresponding GLI requirement. Section 132.4(h) of the GLI appears to provide that, for pollutants regulated under the GLI, a State must demonstrate that the GLI requirement is "not scientifically defensible" before it adopts a different water quality criteria or implementation procedure. Given the deference courts usually afford EPA on technical matters, States may face an almost impossible burden in developing alternative requirements that are protective of human health and the

environment when a State's specific water quality circumstances are taken into account. The bill would provide greater flexibility but retain accountability to continue protecting and improving water quality.

The phrase "overall level of protection comparable to that provided by the guidance," clarifies that a State's program does not need to provide the identical level of protection on a provision by provision basis as that afforded by the GLI, to be considered "consistent with" the GLI. Section 132.5(g)(3) of the GLI requires that each and every element of a State's water quality program must be as protective as the corresponding element in the GLI for a State's water quality program to be deemed "consistent with" the GLI. States should be permitted to demonstrate to EPA that, overall, their programs provide a comparable level of protection, even if particular elements of a State's program are not adopted from the GLI. The bill provides the States with the ability to make this demonstration.

Finally, the bill specifies that when EPA is evaluating whether the State's program is consistent with the GLI, EPA must take "into account the specific circumstances of the State's waters." The GLI allows States limited ability to take sit-specific circumstances into account in the development of their programs, and even then, only with respect to the adoption or development of water quality criteria or values. The GLI should permit a State to demonstrate that the specific circumstances of the State's waters justify different requirements in other elements of the State's water quality programs—not just in the adoption or development of criteria or values. The bill would allow the States to develop their implementation procedures in a manner that appropriately addresses the States' specific water quality situations.

In short, EPA's final GLI, while a considerable improvement over earlier proposals, is still very restrictive and does not provide the States with sufficient flexibility to tailor their water quality programs to their needs. The bill remedies these deficiencies, while providing an appropriate level of environmental protection and keeping in place a mechanism to significantly improve water quality.

Reauthorization of Assessment and Remediation of Contaminated Sediments (ARCS) Program. Section 107(c) authorizes $3.5 million per year for fiscal years 1996 through 2000 for the ARCS program and $1 million per year for fiscal years 1996 through 2000 for technical assistance. Initially, the Administrator of EPA, in consultation with the Assistant Secretary of the Army, is directed to conduct three projects involving promising technologies and practices to remedy contaminated sediments at sites in the Great Lakes System. The Administrator also has the discretion to expand the number of projects.

Authorization of Appropriations. Section 107(d) authorizes $4 million per year for fiscal years 1996, 1997 and 1998, for the health research report identified in section 118 of the Act. Additionally, the bill provides an authorization of $17.5 million per year for fiscal years 1996 through 2000 for the Great Lakes Programs.

TITLE II—CONSTRUCTION GRANTS

Section 201. Uses of funds

Subsection (a) removes the limitation in existing law that no more than 20 percent of a State's SRF financing may be obligated to correct combined sewer overflows, construct collector sewer projects, and correct infiltration inflow.

Subsection (b) requires EPA, with the concurrence of the States, to develop procedures to facilitate and expedite the retroactivity and provision of grant funding for facilities already under construction.

Section 202. Administration of closeout of construction grant program

This section allows EPA to negotiate a budget with States for using grant funds to administer the closeout of the construction grant program.

Section 203. Sewage collection systems

Section 203 expands funding eligibility for sewage collection systems in existence after 1972 but prior to the date of enactment of the Clean Water Amendments of 1995.

Section 204. Treatment works defined

Subsection (a) amends the definition of "treatment works" under section 212 of the Act to clarify that the existing definition includes all land acquisition necessary for construction of the treatment works. This unambiguously makes such costs eligible for funding under the SRF program.

Subsection (b) is a technical correction to remove unnecessary language in section 218 of the Act relating to cost effectiveness.

Section 205. Value engineering review

Section 205 raises the threshold for requiring value engineering review for a project from $10 million to $25 million.

Section 206. Grants for wastewater treatment

Section 206 authorizes $300 million for fiscal year 1996 (if the total amount appropriated to carry out Title VI of the Act is at least $3 billion in fiscal year 1996) for grants to (1) coastal localities including, but not limited to, New Orleans, Louisiana, coastal localities in Bristol County, Massachusetts, and other coastal localities meeting certain needs and hardship conditions and (2) small communities for the purpose of constructing treatment works.

In many cases, funds authorized in this section will be used for responding to combined sewer overflows (CSOs). Construction of CSO control facilities is costly and local communities currently bear most of the cost. EPA conservatively estimates that CSO construction needs are presently $42 billion depending on case-by-case permit decisions yet to be made by the Agency or delegated to States under the National Pollutant Discharge Elimination System permit program. These costs will have a major impact on local governments and their sewer ratepayers.

Much of the initial CSO permitting and construction effort focuses on coastal areas. The cities of Richmond and Lynchburg, Virginia, for instance, have developed and are implementing CSO control plans based on individual consent orders to comply with the Clean Water Act's CSO control requirements. Both city discharges influence the Chesapeake Bay. The Committee intends that some of the funds authorized in this section be available, on an equal basis, to Richmond and Lynchburg. Lynchburg's required program totals $250 million for 16,000 customers resulting in rates of 1.25 percent of median household income by 1998. Richmond's control program totals $400 million which will result in rates of 1.8 percent of median household income. These construction programs include innovative and alternative control features that will be of use to other communities in planning and designing least cost CSO facilities.

TITLE III—STANDARDS AND ENFORCEMENT

Title III of the bill includes the provisions that amend Title III of the Clean Water Act. Title III of the Act addresses standards, effluent limitations, pretreatment standards, inspections, and enforcement.

Section 301. Effluent limitations

Compliance Schedules. Section (a) amends section 301(b) of the Act to replace obsolete deadlines for compliance with effluent limitations with a three-year deadline. This section has prospective effect only and does not affect any past or pending enforcement actions.

Modifications for Nonconventional Pollutants. Section (b) amends section 301(g) of the Act to remove the requirement that EPA first list a pollutant before the permitting authority (EPA or a State) may use the flexibility provided under section 301(g) to allow a permittee to comply with Best Practicable Control Technology or water quality standards (whichever is applicable) is lieu of Best Available Technology. The demonstrations a permittee must make before it is eligible for such a modification are not amended.

Since 1977, the Act has contained authority for a permit holder to receive a site-specific variance from Best Available Technology limitations for nonconventional pollutants, where the discharger demonstrates that less stringent limitations are sufficient to protect water quality and designated uses. In essence, this is a provision to prevent "treatment for treatment's sake." This provision has been used very infrequently, however, in part because in 1987 Congress restricted the variance to five listed pollutants and any others that EPA adds to that list. To date, no pollutants have been added. Because this variance is applied on a case-by-case basis, it is not necessary to restrict it to certain pollutants.

The Committee expects the permitting authority to subject any requests for a variance under this section to careful review to ensure that the permittee qualifies for the variance.

Coal Remining. Section (c) amends section 301(p) of the Act to allow EPA or a State to make modifications to effluent limitations in permits for coal remining even if the remining operation exceeds State water quality standards if (1) the receiving waters do not

meet water quality standards prior to remining and (2) as part of its permit application, the applicant submits a plan which demonstrates that identified measures will be utilized to improve the existing quality of the receiving water.

This provision removes a barrier to remining operations that can be environmentally beneficial by reducing pollutants in discharges from former mining operations, thereby improving water quality.

Preexisting Coal Remining Operations. Section (d) amends section 301(p) to provide that operators of a coal remining operation that commenced remining prior to the adoption of section 301(p) in a State program approved under section 402 are deemed to be in compliance with sections 301, 302, 306, 307, and 402 of this Act if (1) the post-mining discharges from the operation are the same or better than discharges prior to the coal remining operation and (2) the remining was conducted under a Surface Mining Control and Reclamation Act permit.

Section 302. Pollution prevention opportunities

The current system of command and control regulation has gone about as far as it can go in making major gains for the environment, and more creative solutions are needed to deal with the problems that remain. Pollution prevention, or not generating waste in the first place, is one approach to continuing environmental improvements.

One of the most frequent complaints heard by the Committee during its consideration of the bill relates to the "one-size-fits-all" requirements of the Clean Water Act. Through its rigid application of numerical and technology-based standards applicable at the end of the pipe, the Clean Water Act currently does not encourage multi-pollution prevention efforts. The "one-size-fits-all" approach to environmental standards was effective when most sources of pollution were uncontrolled. Now, with typical control technologies achieving 95 to over 99 percent efficiency, the cost of achieving the last increment can be astronomical relative to the benefits derived. And, with its focus on one media alone, the Clean Water Act misses opportunities to rationalize the controls it imposes, so benefits across all media can be missed. Section 302 of the bill amends the Clean Water Act to provide additional flexibility to allow permittees to engage in pollution prevention measures that are environmentally beneficial.

In reviewing requests for the permit modifications provided for under this section, the Committee expects the permitting authority to subject any such requests to careful review to ensure that the permittee qualifies for the modification. In determining whether the modification will result in an overall net environmental benefit, the Committee expects the permitting authority to examine both acute and chronic effects on water quality. Through the permitting process, the public will have an opportunity to review and comment on any proposed modification. In addition, EPA retains the authority even in delegated States to review and, if appropriate, disapprove State permits. Accordingly, only those permit modifications that truly result in an environmental benefit should be authorized.

Innovative Production Processes. Under section 301(k) of the current Act, EPA or a State may provide a waiver of a technology-

based effluent limitation if the permittee proposes to develop and use an innovative pollution prevention technology in accordance with standards set out in that section. Section (a) amends section 301(k) to extend these innovative technology waivers from 2 to 3 years. This section also authorizes EPA or the State to make other appropriate modifications to permit conditions to implement the innovative pollution prevention technology. In addition, this section directs a court or EPA to take into account a permittee's good faith efforts to implement the innovative technology to reduce or eliminate any penalties for violations caused by the unexpected failure of the innovative technology. Finally, this section requires EPA to publish a report on innovative technologies. In implementing this section, the Committee intends the permitting authority to condition the permit upon implementation of the innovative pollution control technology that is designed to achieve the standards set forth in this section. The Committee does not intend the permitting authority to impose any permit limitations for pollutants in media other than water.

Pollution Prevention Programs. Section (b) adds a new section 301(q) to the Act to authorize EPA or the State to modify technology-based standards in a permit or pretreatment program, where the permitting authority determines that pollution prevention measures taken by the source will achieve an overall reduction in emissions to the environment from the facility (including offsetting reductions in the discharge of pollutants by that source to other environmental media) that is (1) beyond that required by law, (2) greater than would otherwise be achievable, and (3) will result in an overall net benefit to the environment.

The modification to the permit (or pretreatment program) may be extended beyond its initial term of 10 years. However, if the permitting authority does not extend the permit modification, the permittee shall have a reasonable period to time, not to exceed 2 years to come into compliance with otherwise applicable requirements of the Act.

The Committee intends to provide the permitting authority with the flexibility to make appropriate adjustments to a permit to the extent necessary to allow an environmentally beneficial pollution prevention project to go forward. For example, a plant in Louisiana developed a multimedia pollution prevention project that would have avoided a costly expansion of its end-of-pipe wastewater treatment system to meet limitations for Total Suspended Solids. The project would have recovered 40,000 pounds of product each day, reduced land disposal by 3,000 pounds a day, cut air emissions and saved energy. However, pilot studies showed that while the rigid numerical standard for Total Suspended Solids could be met under most weather conditions, the engineers could not guarantee that the system would meet the standard 100 percent of the time. A very cold day in Louisiana might cause the limit to be exceeded by an environmentally insignificant amount. The plant could not take the risk of going forward with the project without the certainty of meeting the standard.

Because the Act does not currently give permitting authorities any flexibility with respect to effluent limitations, this innovative solution could not be implemented. Under the bill, the permitting

authority could condition the permit on implementation of this pollution prevention project and revise the standard for Total Suspended Solids in the permit to the level attainable by that project.

In a report of the National Advisory Council for Environmental Policy and Technology (NACEPT), industry and environmentalists agreed that the Clean Water effluent guidelines process must be more flexible, and must impart the pollution prevention mindset. Business and environmental leaders have been struggling with this issue for some time. While they may not agree on the approach, they agree that environmental standards should be set in ways that encourage pollution prevention strategies. H.R. 961 has recognized this issue by allowing the Administrator, or authorized State, to modify the technology-based requirements of a section 402 permit if pollution prevention measures or practices will result in greater overall reductions in emissions to the environment than would be otherwise achievable under the existing command-and-control regime.

For the purposes of this section, the term "pollution prevention measures or practices (including recycling, source reduction and other measures to reduce discharges or other releases to the environment beyond those otherwise required by law)" is intended to allow dischargers the maximum flexibility to choose measures that provide the greatest opportunity for cost-effective improvements in environmental performance. The Agency is not expected to define or limit by regulations what measures will qualify. In addition, this section does not authorize the permitting authority to mandate particular measures or practices beyond those required by law in a permit without the consent of the permittee.

Because new Section 301(q) only amends the Clean Water Act, it may only be used to modify a Clean Water permit limit. It does not provide authority for modification of any requirement under another statute and does not provide authority to impose limits on pollutants in media other than water. This action represents the limits of this Committee's jurisdiction. It should not be viewed as indicating opposition to a broader flexibility provision that would allow for modifications such as those available under 301(q) for other requirements of other environmental statutes, or multi-media permits.

The concept of "overall net benefit to the environment" means that a facility can comply with the Act by implementing technology that can achieve greater net reductions in releases, waste generation, or health or environmental risk either in a single medium or across several media, than would otherwise be achieved in the aggregate under existing requirements. The assessment of net benefits should not require an exhaustive risk analysis, but the risk reduction consequences of proposed measures should be compared to those under the otherwise required measures. It will be left to the permitting authority's discretion to determine whether a discharger's proposed pollution prevention measure will result in an overall net benefit to the environment. The Committee fully expects EPA to issue guidance to permit writers to help them make these determinations. The Committee believes, however, that the facility should be free to demonstrate to the satisfaction of the permitting authority a verifiable means of measuring the net benefits. By not

specifying a formula for such determinations, however, it is expected that innovative techniques will more rapidly develop.

Pollution Reduction Agreements. Section (c) adds a new section 301(r) to the Act that authorizes EPA or the State to modify a permit (or a pretreatment program) where the permitting authority determines that the permittee has entered into a binding contractual agreement with another source within a watershed to implement pollution reduction measures beyond those required by law such that there will be an overall reduction in discharges to the watershed that is greater than would otherwise be achievable and resulting in a net benefit to the watershed.

If a proposed trading agreement will result discharges into a watershed that is within the jurisdiction of two or more States, the permitting authority must notify the affected States or the proposed permit modification. An affected State may disapprove the proposed trading agreement if it acts within 90 days of receiving such notice.

New section 301(r) is intended to further promote innovative approaches to pollution prevention, either separately or in conjunction with new section 301(q). New section 301(r) allows a source to enter into a binding contractual agreement with another source in the same watershed to gain greater reductions in discharges to the watershed than would otherwise be achieved.

The President's "Reinventing Environmental Regulation" initiative calls for an effluent trading program "as a cost-effective approach for reducing water pollution." The Administration estimates the potential cost savings for three types of effluent trading:

$611 million to $5.6 billion for point source/nonpoint source trading;

$8.4 million to $1.9 billion for point source/point source trading;

$658 million to $7.5 billion for trading among indirect dischargers.

Further reductions from sources that are already well-controlled can be extremely expensive when compared to the environmental benefit achieved. Often reduction opportunities from less well controlled sources, such as certain nonpoint sources, are greater, and can be achieved far more cheaply. This provision will give EPA, the States, and sources the flexibility to explore the most cost-effective solutions to water pollution problems. This in turn, will increase actual progress in improving water quality.

Antibacksliding. Section (d) amends section 402(o) of the Act to exempt pollution prevention programs, pollution reduction agreements and certain pollution prevention or water conservation measures from antibacksliding provisions.

The current antibacksliding prohibition in section 402(o) generally prohibits the renewal or modification of a discharge permit to contain a less stringent effluent limitation. The provision is a barrier to changes in permit limitations that actually produce a net benefit to the environment.

Types of pollution prevention activities for which antibacksliding barriers have been raised include utilizing treated wastewater as cooling water or substituting one process chemical for a less toxic one. In the first case, the use of treated wastewater as cooling

water could require an increase in permit limitations for the cooling water discharge, to reflect pollutants in the treated wastewater (which would be discharged to surface waters anyway). In the second case, substituting a detergent cleaning process for chlorinated solvent cleaning would require an increase in a permit limitation for phosphate, even though the permitted discharge of the more toxic solvent would decrease. While these types of changes might fall within one of the current exemptions to section 402(o), this amendment assures that the antibacksliding prohibition does not discourage pollution prevention measures.

Antidegradation Review. Section (d) amends section 303(d) to preclude EPA from requiring a State to perform an antidegradation review in the case of increased discharges resulting from permit modifications for nonconventional pollutants under section 301(g), to encourage innovative technologies under section 301(k), for pollution prevention programs under new section 301(q), for pollution reduction agreements under new section 301(r), and for POTWs serving populations of 20,000 people or fewer under new section 301(t).

EPA's current antidegradation policy regulations require a special review of actions that result in "degradation" or "lowering of water quality." In some instances this has been interpreted very broadly to include any increase in any permit limitation, even though the overall impact on water quality is beneficial or insignificant. Steps to increase water recycling and decrease consumptive uses of water may be subjected to antidegradation review because they result in an increase in the concentration of a pollutant in the discharge, even though the mass of the pollutant discharged remains the same or decreases.

The amendment does not preclude a State from conducting an antidegradation review if it so chooses. Instead, the amendment restores the State's primary responsibility for ensuring that water quality is protected.

Innovative Pretreatment Production Processes, Technologies, and Methods. Section (f) amends section 307(e) to make changes to the existing pretreatment innovative technology waiver similar to those made to the general innovative technology waiver under section 302(a) of the bill.

Section 303. Water quality standards and implementation plans

No Reasonable Relationship. Subsection (a) amends section 303(b) of the Act of preclude EPA from establishing a water quality standard under 303(b) where the costs of attaining such a standard are not reasonably related to the anticipated benefits.

This cost-benefit test applies to EPA only. No requirement of any cost-benefit analysis is placed on the State water quality standard setting process.

Revision of State Standards. Subsection (b) amends section 303(c) of the Act to make certain revisions to the process by which States set water quality standards.

First, an amendment to section 303(c)(1) revises the timetable for State review of water quality standards from three years to five years. In addition, this amendment requires a State to initiate review of a State water quality standard that includes criteria that

are revised by EPA, within 180 days of such revision. The amendment only requires States to hold a public hearing initiating the review process within the 180 day time period specified in the bill. The Committee does not expect a State to complete a revision of a State water quality standard (if the State determines such revision is necessary) within 180 days. Nor does it require a State to complete the review process after the public hearing if the State determines that revision of its State water quality standard is not appropriate.

Second, section 303(c)(2) is amended to allow States to consider costs and benefits when setting water quality standards. In addition, this section is amended to require States, when reviewing a State water quality standard that contains criteria which EPA has revised since the date of enactment of this bill, to include in any administrative record required under State law a copy of the EPA's estimate of the cost of complying with the revised criteria (that section 307(c) of the bill requires EPA to develop), if available. The State administrative record also shall include any comments received by the State on the EPA cost estimate during its review of its State water quality standard.

Revision of Designated Uses. Subsection (c) requires EPA to amend its regulations regarding designation of uses of waters by States. For State waters that are not attaining their designated uses, EPA must amend its regulations to allow a State to modify the designated use of such waters if the State determines that attainment of the designated use is infeasible (as defined by the Administrator), or if the State determines that the costs of achieving the designated use are not justified by the benefits. For State waters that are attaining their designated uses, EPA must amend its regulations to allow a State to modify the designated use of such a water only if the State determines that continued maintenance of water quality necessary to support the designated use will result in significant social or economic dislocations substantially out of proportion to the benefits. This amendment also allows a permitting authority to modify water quality based limits in permits to conform to any modified designated use.

This amendment gives States greater flexibility in revising the designated uses of receiving waters. This flexibility is necessary because, in 1975, EPA required States to designate all waters that had not yet been assigned a designed use as "fishable, swimmable" waters. Accordingly, some waters, such as certain dry stream beds in the arid west, have been assigned totally infeasible designated uses.

Section 304. Use of biological monitoring

Section 304 of the bill provides important revisions to the biological monitoring provisions of section 303(c)(2)(B) of the Act. Biological monitoring and whole effluent toxicity testing was incorporated into the Clean Water Act in 1987 to provide for the detection of toxicity to receiving waters where chemical specific criteria were not available. However, in implementing this authority, EPA has chosen to use a limited number of non-site specific species for use in biological monitoring. In addition, EPA's whole effluent toxicity test has proven to be inherently unreliable, with a variability of

plus or minus 30% or greater. Notwithstanding the irrelevance of many test species and the variability of the test, EPA has chosen to treat each whole effluent toxicity test failure as a violation of the Act enforceable by EPA or through citizen suits. Thus, dischargers face up to $25,000 per day penalties for each test failure when the only way to completely guarantee against test failures is to construct highly advanced and costly treatment processes such as reverse osmosis.

Laboratory Biological Monitoring Criteria. To address concerns over the relevance and reliability of such testing, section 304(a) of the bill amends section 303(c)(2) to require criteria for whole effluent toxicity based on laboratory biological monitoring or assessment methods to use an aquatic species that is indigenous or representative of indigenous and relevant to the type of waters covered by such criteria. In addition, such criteria must take into account analytical variability. The Committee intends to prevent the permitting authority from using highly sensitive species that are not found in the receiving water ecosystem for whole effluent toxicity testing. However, the Committee also recognizes that some flexibility is required because if a receiving water is degraded, only the most hardy species may remain. Accordingly, the Committee intends the permitting authority to use species that are representative of species that one finds in a receiving water but for the water quality impairment.

Permit Procedures. To address concern over the inappropriate use of biological monitoring or whole effluent toxicity testing as enforceable permit conditions, section 304(b) of the bill adds a new subsection (q) to section 402 to specifically address permit conditions relating to biological monitoring. Under this new subsection, permits requiring biological monitoring or whole effluent toxicity testing must include procedures for responding to test failure by identifying and reducing, or, where feasible, eliminating, the source of toxicity. The new subsection also specifies that the failure of a biological monitoring test or whole effluent toxicity test will not result in a finding of violation under this Act unless the permittee has failed to comply with such procedures. Finally, new subsection (q) specifies that a permit be written to allow permittees to discontinue response procedures if certain conditions are met. If the permittee is a POTW, the permittee may discontinue response procedures if the source or cause of the toxicity cannot, after a thorough investigation, be identified. If the permittee is not a POTW, the permittee may discontinue response procedures if the permittee performs a field bioassessment study and demonstrates that a balanced and healthy population of aquatic species lives in the receiving waters affected by the discharge and water quality standards (other than the standard for whole effluent toxicity) are met for such waters.

The Committee intends the permit writer to have the flexibility to include conditions necessary to protect water quality in the permit, within the parameters specified in new subsection (q). Response procedures may include testing and investigations to identify the source of the toxicity. Once the source of toxicity is identified, the response procedures may then require reduction of the

source of toxicity, or, if feasible, elimination of the source of toxicity entirely through pollution prevention or source reduction.

If an industrial discharger cannot identify the source of toxicity, the permit conditions may still require that discharger to take actions to reduce or eliminate the toxicity through treatment or otherwise unless the permittee demonstrates that there is no toxicity problem in the receiving waters through a field bioassessment study.

If, however, a POTW cannot identify the source of toxicity after a thorough investigation, the permit must allow it to discontinue its response procedures. Feasible response procedures for POTWs do not include any requirement to install treatment technology. This "off-ramp" is appropriate for a POTW, which does not have complete control over the pollutants introduced to its treatment system. A treatment works' toxicity test failure may be the result of unintended combinations of innocuous substances from household products discharged to sewers or illegal discharges beyond the control of the treatment works. Toxicity from these types of sources is a short-term event. Of course, if the treatment works has another test failure the next time it conducts whole effluent toxicity testing, the response procedures begin anew.

Information on Water Quality Criteria. Section 304(c) of the bill amends section 304(a)(8) of the Act to ensure that information published by EPA on water quality criteria for toxicity using biological monitoring and assessment methods is consistent with the requirements of section 303(c)(2)(B), as amended.

Section 305. Arid areas

Water bodies in the western, arid part of the United States often have very different characteristics from water bodies in other parts of the country. The Clean Water Act does not currently take into account regional differences. For example, in the West there is extensive use of canals for irrigation waters and other purposes. Not all of these canals are waters of the United States. However, if a canal is a water of the United States, flexibility is needed in setting water quality standards to allow the canal to serve its intended purpose. In addition, some waters in arid areas are not perennial streams. These streams have water only seasonally or after a storm event. Other streams in arid areas consist entirely of effluent much of the year and, but for the effluent, would be dry stream beds. This section of the bill provides flexibility to allow States to take into account the unique characteristics of the arid West when setting water quality standards for these waters.

Constructed Water Conveyances. Section 305(a) of the bill amends section 303(c)(2) of the Act to authorize States to take into consideration relevant uses, return flow from, maintenance, and purposes of constructed water conveyances; and State or regional water resources management and water conservation plans, when setting water quality standards for constructed water conveyances. Nothing in this provision is intended to affect any authorities or programs of the Bureau of Reclamation.

Criteria and Guidance for Ephemeral and Effluent-Dependent Streams. Section 305(b) amends section 304(a) of the Act to require EPA to develop and publish criteria for ephemeral and effluent-de-

pendent streams and guidance to States for developing water quality standards for such streams within 2 years of enactment, taking into account factors relevant to such streams.

Factors Required to be Considered by Administrator. Section 305(c) amends section 303(c)(4) of the Act to require EPA to take into account relevant factors when revising or adopting any new standard for ephemeral or effluent-dependent streams.

Definitions. Section 305(d) amends section 502 to add definitions for effluent-dependent streams, ephemeral streams, and constructed water conveyances.

Section 306. Total maximum daily loads

Currently, section 303(d)(1)(C) of the Clean Water Act requires States to calculate a total maximum daily load (TMDL) for each receiving water that is not currently meeting applicable water quality standards. As a result of this statutory language, States have been sued for failure to establish TMDLs, even where a State may not have sufficient data to do so. In addition, when a State is not able to identify all sources of pollution contributing to a violation of a water quality standard, EPA requires that the entire load reduction necessary to meet water quality standards be assigned to point sources in the absence of "reasonable assurances" that nonpoint source pollution reductions will be achieved.

The bill amends section 303(d)(1)(C) to provide States with greater flexibility in performing TMDLs by giving States the authority to determine whether and when a TMDL is necessary to achieve further reasonable progress toward the attainment or maintenance of water quality standards. States also are authorized to consider anticipated load reductions from implementation of management practices, stormwater controls or other nonpoint or point source controls when establishing TMDLs.

To ensure that, when a State decides to establish a TMDL, it does so in a scientifically sound manner, the bill also requires States to consider the availability of scientifically valid data and information, projected reductions for all sources, and cost-effectiveness of control measures when establishing TMDLs.

Section 307. Revision of criteria, standards, and limitations

During consideration of H.R. 961, the Committee heard many expressions of concern over the need to ensure that water quality criteria, standards, and effluent limitations are based on sound science. The amendments in this section of the bill address this concern.

Revision of Water Quality Criteria. Section 307(a) of the bill amends section 304(a) of the Act to add factors to be reflected in EPA water quality criteria, including what organisms are likely to be present in the ecosystem, bioavailability of pollutants, exposure required to induce adverse effects, and bioaccumulation threat.

This amendment also requires EPA to certify every 5 years that water quality criteria reflect the latest and best scientific knowledge. EPA must update all existing criteria within 5 years, and ammonia, chronic effluent toxicity, and metals within 1 year, as necessary to make this certification. Particular concern has been raised regarding metals criteria documents. EPA knows that these

many of the metals criteria are out of date and will result in limitations below what is necessary to protect human health and the environment, but has not updated these criteria due to other priorities. This amendment makes updating metals criteria, as well as criteria for ammonia and chronic whole effluent toxicity, a high priority for the agency.

Consideration of Certain Contaminants. Section 307(b) amends section 304(a) of the Act to require EPA to consider contaminants regulated under the Safe Drinking Water Act when developing and revising water quality criteria.

Cost Estimate. Section 307(c) amends section 304(a) to require EPA, when issuing or revising water quality criteria, to develop and publish an estimate of the costs that would likely be incurred if sources were required to comply with the criteria. The Committee recognizes that EPA will have to make assumptions and use model scenarios to develop this cost estimates. However, the Committee believes that it is important for the public and States to have information regarding costs of compliance with water quality criteria when such criteria are incorporated into water quality standards. This amendment does not require EPA to perform a cost-benefit analysis, nor does it require water quality criteria to meet any cost-effectiveness test. The criteria document and the cost information can be two separate, stand-alone documents.

Revision of Effluent Limitations. Section 307(d) amends section 304(b) of the Act. First, this amendment eliminates the impracticable requirement that EPA review all of the categorical effluent guidelines every year. Second, this amendment clarifies that, where Best Practicable Technology effluent guidelines have already been published for an industrial category, additional, more stringent requirements for conventional pollutants can be imposed only if they meet the Best Conventional Technology economic reasonableness tests currently specified in section 304(b)(4)(B) of the Act.

In 1977, Congress concluded that Best Practical Technology had largely addressed control of industrial discharges of conventional pollutants. Additional efforts were focused on toxics, but additional conventional pollutant treatment could be required if economically reasonable. Recently, in effluent guidelines rulemakings for the pulp and paper and pharmaceutical manufacturing categories, EPA has suggested that it can impose more stringent conventional pollutant limitations which do not meet Best Conventional Technology economic reasonableness tests, simply by revising Best Practicable Technology. This would result in precisely the "treatment for treatment's sake" that Congress sought to avoid in 1977. As Congress concluded in 1977, an industry category should not be required to make even further reductions in conventional pollutants where the cost is greater than what additional removal of the same conventional pollutants would cost at a POTW.

Schedule for Review of Guidelines. Section 307(e) amends section 304(m) of the Act to require EPA to identify categories of sources for which guidelines under section 304(b)(2) and section 306 have not been set, determine which sources have discharges that present a significant risk to human health and the environment and establish a schedule for issuing effluent guidelines for such sources.

EPA's current effluent guidelines plan is based on a 1992 consent degree settling a 1989 lawsuit filed by the Natural Resources Defense Council (NRDC) against EPA. The consent decree lists certain industry categories for which EPA must develop effluent guidelines and commits EPA to a schedule for conducting preliminary studies, and proposing and issuing additional effluent guidelines. In this consent decree, NRDC disputed whether EPA has the discretion to decide not to proceed with the development of an effluent guideline where EPA determines that the guideline would not have the potential to significantly reduce risk to human health or the environment. NRDC reserved the right to sue EPA again if the agency did not issue the guidelines listed in the decree and continue to issue additional effluent guidelines on the schedule set forth in the decree, even if EPA determined that no significant risk would be reduced by issuing those guidelines. This amendment supersedes the NRDC consent degree to ensure that EPA has the flexibility to, and in fact does, focus its limited resources for guidelines development on sources that present a significant risk.

Revision of Pretreatment Requirements. Section 307(f) of the bill amends section 304(g) to eliminate the impracticable requirement that EPA review all of the categorical pretreatment standards every year.

Central Treatment Facility Exemption. Section 307(g) adds a new subsection to section 304 of the Act to codify the existing regulatory exemption from effluent guidelines for certain central treatment facilities in the Iron and Steel Manufacturing Point Source Category. When the effluent guidelines for the Iron and Steel Manufacturing category were promulgated in the early 1980's, EPA did not evaluate facilities that treat all of their individual waste streams in a "central treatment facility." In order to settle challenges raised by industry representatives, the effluent guideline regulation was amended by EPA to provide an exemption for certain treatment facilities that received the combined waste streams of a number of processes and source subcategories at steel plants. The 21 central treatment facilities subject to the exemption were listed by name in the regulation at 40 C.F.R. section 420.01. This exemption was to last until the regulation was amended to establish effluent guidelines specifically for central treatment facilities. EPA has never published a revised effluent guideline applicable to central treatment facilities. Accordingly, the exemption for central treatment facilities at any of the listed steel plants continues to be available.

Section 308. Information and guidelines

Section 308 amends section 304(i) of the Act to modify current requirements for eligibility to sit on permit review boards to increase flexibility for government officials and retirees.

Section 309. Secondary treatment

The debate on Clean Water Act reauthorization, as well as the debate on unfunded mandates generally, identified the Clean Water Act requirement that municipal wastewater treatment plants meet secondary treatment standards as one of the most burdensome mandates on manicipalities. A significant number of

smaller communities have been unable to meet this requirement for a number of reasons. Capital costs for construction of costly and sophisticated secondary treatment facilities are often beyond the means of small communities, even with zero interest loans. The technical expertise to operate and maintain these facilities is often not available in these communities. In addition, to be cost-effective, secondary treatment facilities require an economy of scale not found in small communities. This section of the bill adds flexibility to the implementation of secondary treatment requirements to address these concerns. In addition, secondary treatment may provide no environmental benefit when the treatment plant discharges through a deep ocean outfall. This section of the bill also addresses these concerns.

Coastal Discharges. Section 309(a) amends section 304(d) of the Act to provide that a municipal wastewater treatment facility be considered a secondary treatment facility if the facility discharge is subject to chemically enhanced primary treatment; discharges through an ocean outfall greater than 4 miles offshore; is in compliance with all State and local water quality standards for reciving waters; and is subject to an ocean monitoring program.

Modification of Secondary Treatment Requirements. Section 309(b) adds a new section 301(s) to the Act to require EPA to modify secondary treatment requirements if the POTW discharges pollutants into marine waters that are at least 150 feet deep through an ocean outfall which discharges at least 1 mile offshore; the facility's discharge is in compliance with all water quality standards for receiving waters; the discharge will be subject to an ocean monitoring program; the applicant has in place an EPA-approved pretreatment plan; and the effluent has received chemically enhanced primary treatment and achieves a monthly average removal of 75% removal of suspended solids.

Modifications for Small System Treatment Technologies. Section 309(c) amends section 301 to add a new subsection (t) to allow EPA or a State to issue a permit that modifies secondary treatment requirements for POTWs serving communities with a population of 20,000 or fewer if the POTW demonstrates (1) that the effluent is from domestic users, and (2) the facility has an alternative treatment system that is equivalent to secondary treatment or will provide an adequate level of protection to human health and the environment and contribute to the attainment of water quality standards in the receiving water and watershed.

The Committee intends for this amendment to provide EPA and States with the statutory authority and increased flexibility to approve innovative alternative treatment systems for small communities, and to deem that such systems meet the technology-based requirements of the Act. Many alternatives to full secondary treatment have been researched, developed, or improved to the point that they now represent a realistic alternative for small communities. These treatment systems, which include constructed wetlands, recirculating sand filters, oxidation lagoons, and other "natural" land-based and water-based systems, offer an environmentally protective, cost-effective, and relatively low technology option for helping small communities meet their wastewater needs.

Puerto Rico. Section 309(d) further amends section 301 to add a new subsection (u) to allow Puerto Rico to initiate a study to determine the feasibility of a deepwater outfall for the POTW located at Mayaguez, Puerto Rico and allow the Mayaguez treatment works to submit an application for a 301(h) waiver of secondary treatment requirements within 18 months of enactment.

The community of Mayaguez has been prevented from constructing a deep ocean outfall to improve the effectiveness of its sewage treatment program. Mayaguez has been unable to receive a wavier from secondary treatment requirements, preventing the construction of a deep ocean outfall. Section 309(d) would allow such an application, and allow EPA to review a new deep ocean outfall proposal pursuant to current Clean Water Act standards for such outfalls. Section 309(d) does not alter the rigorous criteria for issuing such a waiver, or override the judgment of EPA.

Puerto Rico has elicited comments from scientists and waste water treatment experts, who are in agreement on the merits of constructing a deep ocean outfall in Mayaguez. Apparently, it will save the Commonwealth of Puerto Rico approximately $65 million and have environmental benefit as well.

The history of Puerto Rico's difficulties in gaining approval from EPA for a deep ocean outfall are well documented. Section 309(d) should allow Puerto Rico and the EPA to reach accord on the construction of a deep ocean outfall. This provision allows EPA to review Puerto Rico's new deep ocean outfall application. It allows Puerto Rico to apply under existing Section 301(h) standards for a modification that best protects the marine environment. It presents a reasonable compromise, allowing the Commonwealth and EPA to implement a municipal sewage disposal program that is based on sound science and appropriate environmental and economic considerations.

Under this provision, EPA is required to make a final determination within nine months of receiving an application. If EPA grants the waiver, Puerto Rico is required to complete construction of the outfall within five years of the date of enactment. These requirements ensure that the Agency and the Commonwealth act expeditiously to construct a facility that will benefit the environment and the residents of Puerto Rico.

This measure is consistent with existing waiver standards in the Clean Water Act, and will only be fully implemented by EPA if environmental and economic objectives can be successfully met.

Section 310. Toxic pollutants

Toxic Effluent Limitations and Standards. Section 310(a) of the bill amends section 307(a)(2) of the Act to require that specific factors be considered by EPA in promulgating effluent standards (or prohibitions) for toxic chemicals. The factors to be considered include the pollutant's persistence, toxicity, degradability, and bioaccumulation potential; the magnitude of risk; the relative contribution of point source discharges to the risk; the availability of substitute chemicals; the beneficial and adverse social and economic effect; the availability of other regulatory authorities; and such other factors as the Administrator deems appropriate.

Beach Water Quality Monitoring. Section 310(b) of the bill amends 304 of the Act to require EPA, in consultation with Federal, State, and local agencies, to issue guidance within 18 months of enactment on beach water quality monitoring and the issuance of health advisories. EPA also must report on information available on State beach water quality monitoring.

Fish Consumption Advisories. Section 310(c) of the bill specifies that any fish consumption advisories issued by EPA must be based on the protocols, methodology, and findings of FDA.

Section 311. Local pretreatment authority

Section 311 of the bill adds a new subsection (f) to section 307 of the Act to allow a POTW to apply local limits in lieu of national categorical pretreatment standards for the purpose of eliminating redundant treatment or reducing the administrative burden on the POTW.

Industrial pretreatment and EPA-approved local pretreatment limits have been an integral part of POTW operations for many decades. Some local programs even predate passage of the 1972 Act. Considering the complexities of operating POTWs and attaining water quality, the implementation of pretreatment programs is among the most important contributions that POTWs have been making to environmental protection, while at the same time protecting the treatment facility and generating beneficially usable biosolids.

Section 307(b) of the present Act authorizes EPA to establish and revise federal pretreatment standards; provides that the revision of categorical standards for individual POTWs "reflect the removal" of toxic pollutants by such POTWs; and provides that "[n]othing in this subsection shall affect any pretreatment requirement established by any State or local law not in conflict with any pretreatment standard under this section."

POTW pretreatment programs have been a highly successful part of the Act in reducing the discharge of toxics to POTWs and enhancing the quality of the nation's waters. Such programs remain critically important to water quality and to the ability of POTWs to meet federal biosolids and air quality requirements.

For many POTWs, these environmental objectives can best be achieved by use of locally developed pretreatment limits in lieu of federal categorical standards. Currently, such local pretreatment limits regulate many more industries than those covered by federal categorical standards.

The use of local limits to achieve such objectives and requirements can result in the elimination of additional, redundant, or unnecessary treatment by industrial users of POTWs which has little or no environmental benefit. Such redundant or unnecessary treatment should be limited as a matter of common sense, so long as the POTW can meet the objectives of the Act.

EPA has always recognized the utility of local limits since more stringent local limits must be applied in lieu of categorical standards. The mechanism for calculation of local limits was developed by EPA to protect the POTW, prevent pass through of pollutants (including toxics), and protect the quality of biosolids. To be approved, a local pretreatment program must prevent the discharge

of any pollution which would interfere with, pass through, or otherwise be incompatible with the POTW.

In contrast, national categorical pretreatment standards are technology-based standards. As a result, national standards often are not consistent with local standards and in some cases may conflict with the needs of a local POTW. For example, a national categorical pretreatment standard for a can coating operation requires removal of phosphorus, even where the facility discharges to a POTW that has a phosphorus deficiency. As a result, the facility must pretreat for phosphorus, thereby using energy and creating sludge, and the POTW has to buy phosphorus to add to its system.

Section 311 of the bill strengthens environmental protection while allowing common sense flexibility by allowing approved pretreatment programs at POTWs to be operated under performance based statutory conditions without sacrificing water quality or other environmental objectives.

To obtain approval to apply local limits in lieu of categorical pretreatment standards, a POTW must make four demonstrations to the permitting authority: (1) the POTW is in compliance, and is likely to remain in compliance, with its permit under section 402; (2) the POTW is in compliance, and is likely to remain in compliance, with applicable air emissions limitations; (3) biosolids produced by the POTW meet beneficial use requirements under section 405; and (4) the POTW is likely to continue to meet all applicable State requirements. The permitting authority may disapprove any request if it believes that these criteria will not be met.

Two important limitations are placed on this provision. First, a POTW may not apply local limits in lieu of categorical pretreatment requirements applicable to any industrial user that is in significant noncompliance (as defined by EPA) with the pretreatment program. Second, the demonstration to EPA or the State under section 307(f)(1) must be made under the procedures for pretreatment program modification provided for under sections 307 and 402 of the Act.

Finally, the POTW must demonstrate continued compliance with the conditions of this section in its annual pretreatment report to EPA or the State.

Section 312. Compliance with management practices

Section 312 of the bill adds new section 307(g) to the Act to authorize EPA or a State to allow persons who introduce silver into POTWs to comply with a code of management practices in lieu of a pretreatment requirement for silver for a period not to exceed five years from the date of enactment. The code of management practices must meet requirements set out in this section, be approved by EPA, and be accepted by the POTW. The person introducing silver into the POTW also must comply with a Best Available Technology standard.

If EPA or a State allows persons to comply with such a code of management practices in lieu of a pretreatment standard for silver under this section, EPA or a State must modify the POTW's permit conditions and effluent limitations to defer, for a period not to exceed five years, compliance with any effluent limitation derived

from a water quality standard for silver if the receiving waters will be adequately protected.

This amendment provides relief for the photoprocessing industry and other users of silver who introduce silver into POTWs. In order to comply with extremely stringent water quality standards for silver, POTWs have enforced equally stringent local pretreatment limits on indirect dischargers of silver. However, State water quality standards for silver are based on outdated scientific assumptions, so both the water quality standards that POTWs must meet and the local pretreatment limits that the photoprocessing industry and other users of silver must meet are unnecessarily stringent.

In 1990, EPA published draft chronic water quality criteria for silver. After publication, EPA concluded that silver does not pose a human health hazard, withdrew these draft criteria, and advised States that water quality standards for silver are not needed. In fact, EPA has even deleted the primary Maximum Contaminant Level of silver under the Safe Drinking Water Act. EPA also has recognized that silver, and several other metals, is more appropriately measured and regulated on the basis of its dissolved form, rather than on the basis of total metals, as in previous water quality standards.

Before EPA's recognition of its error, many States adopted water quality standards for silver based on the inaccurate and subsequently withdrawn silver criteria and have not taken action to revise or delete these standards. As a result, POTWs in many effluent limitations for silver, and many indirect dischargers are therefore subject to impossibly low local limits for silver, with no environmental benefit.

Section 312 of the bill gives EPA the flexibility to provide interim relief from these overly stringent silver limits for five years. Under other provisions of the bill, EPA is required to update its criteria documents for metals within one year, and States are required to hold a hearing to consider review of their State water quality standard within 180 days of EPA's revision of any applicable water quality criterion. Accordingly, the Committee expects that States with water quality standards for silver will revise those standards within the next five years.

Section 313. Federal enforcement

Adjustment of Penalties. Section 313(a) of the bill amends section 309 of the Act to provide for a consumer price index adjustment to automatically increase or decrease all penalty limits in the Act.

Joining States as Parties in Actions Involving Municipalities. Section 313(b) amends section 309(e) of the Act to make the joining of States as parties to litigation involving municipalities permissive rather than mandatory.

Section 314. Response plans for discharges of oil or hazardous substances

Section 314 includes a general provision relating to the applicability of certain oil or hazardous substance response planning requirements under the CWA.

The provision clarifies how total facility oil storage capacity should be calculated under the EPA's regulations implementing

section 311(j)(5) of the CWA, as amended by the Oil Pollution Act of 1990 (OPA). The provision is necessary to ensure that requirements imposed by section 311(j)(5) to prepare facility response plans (FRPs), and to engage in training and certain other activities, are triggered only when a facility poses a threat of "substantial harm" to the environment due to its potential to release significant quantities of oil.

This provision also clarifies that the requirements of section 311(j)(5) do not apply to municipal and industrial treatment works, or to facilities that store quantities of process water mixed with de minimis quantities of oil. This is consistent with the Congressional intent behind the OPA. The Committee recognizes, through this provision, that municipal and industrial treatment works, and facilities storing process water mixed with de minimis quantities of oil, do not pose the threat of harm to the environment that Congress sought to address through section 311(j)(5).

Section 314 also directs the President to issue regulations clarifying the meaning of the term "de minimis quantities of oil or hazardous substances."

Section 315. Marine sanitation devices

Section 315 of the bill amends section 312(c) of the Act to require EPA to review and, if necessary, revise standards for marine sanitation devices within 2 years of enactment, and every 5 years thereafter, following notice and comment, and in consultation with the Coast Guard.

Section 316. Federal facilities

In 1972, Congress included provisions on Federal facility compliance with our nation's water pollution laws in section 313 of the Clean Water Act. Section 313 called for federal facilities to comply with all Federal, State, and local water pollution requirements.

In April 1992, the U.S. Supreme Court ruled in *U.S. Dept. of Energy* v. *Ohio*, that States could not impose certain fines and penalties against Federal agencies, for violations of the Clean Water Act and the Resource Conservation Recovery Act (RCRA). This decision led to the enactment of the Federal Facilities Compliance Act (H.R. 2194) in the 102nd Congress to clarify that Congress intended to waive sovereign immunity for agencies in violation of RCRA. Federal agencies in violation of the RCRA are now subject to State levied fines and penalties. The 1992 Act, however, did not address the Supreme Court's decision with regard to the Clean Water Act.

Section 316 of H.R. 961, clarifies the intent of section 313 of the Clean Water Act. This measure reaffirms the waiver of sovereign immunity. This waiver subjects the Federal government to the full range of enforcement mechanisms available under the Clean Water Act.

Section 316 is primarily a restatement of existing policies in the Clean Water Act governing Federal facilities. Changes made by section 316, including the clarification of the waiver of sovereign immunity, apply prospectively.

Subsection (a), Applicability of Federal, State, Interstate and local laws, is modeled after section 313(a) of the Act and is in-

tended to embody the same concepts as section 313. New paragraph 313(a)(7) of the Clean Water Act subjects agents, employees, and officers of the U.S. to criminal sanctions under Federal or State water pollution laws. The Committee, however, does not intend that agents, employees or officers be subject to criminal sanctions if their failure to comply with the Clean Water Act is caused by action or inaction of their employers—such as an agency's failure to purchase appropriate wastewater treatment equipment or provide adequate funding to maintain treatment operations.

Subsection (b), Funds Collected by a State is designed to ensure that States are using revenues collected for Federal violations of water laws to improve water quality.

Subsection (c), Enforcement, gives EPA the authority to bring an administrative enforcement action against another Federal government entity.

Subsection (d), Limitation on Actions and Right of Intervention, precludes citizen suits under section 505 relating to violations that the Administrator is diligently pursuing or has resolved through issuance of a final order.

Subsection (e), Definition of Person, defines person to include any department, agency, or instrumentality of the United States.

Subsection (f), Definition of Radioactive Materials, adds definition of radioactive materials to section 502 of the Act. This term excludes materials discharged from certain vessels in the Naval Nuclear Propulsion Program.

Section 317. Clean lakes

Section 317 of the bill amends section 314(d) of the Act to add Paris Twin Lakes, Illinois; Otsego Lake, New York; and Raystown Lake, Pennsylvania, to the Clean Lakes program priority list. This section also authorizes $10 million per year for fiscal year 1996 to fiscal year 2000 to carry out the Clean Lakes program.

Section 318. Cooling water intake structures

Section 318 of the bill amends section 316(b) of the Act to identify factors for EPA to take into account in determining best technology available for new and existing cooling water intake structures.

Section 319. Nonpoint source management programs

Section 319, a central feature of H.R. 961, strengthens, coordinates, and improves the nation's current approach to nonpoint sources of pollution. Hearings, government and scientific reports, and public opinion all seem to agree on one point: nonpoint, or diffuse, water pollution presents one of the nation's greatest remaining challenges. H.R. 961 responds by providing additional funding, flexibility with accountability, agency-wide coordination, and incentives for innovative, market-based approaches, while retaining the basic structure and framework of existing section 319 of the Clean Water Act. The Committee explicitly rejected proposals for broader revisions, placing greater command-and-control authority within EPA and NOAA.

Subsection (a) modifies state assessment report requirements in section 319 of the Act.

Subsection (b) includes various modifications to existing section 319(b), relating to contents, requirements, and mechanisms for each state program. Among other things, it requires each section 319 program to include management practices and measures to reduce pollutant loadings that may include voluntary and incentive-based programs, regulatory programs, enforceable policies and mechanisms, State management programs approved under section 306 of the Coastal Zone Management Act, and other methods to manage nonpoint sources to the degree necessary to provide for reasonable further progress toward attaining water quality standards within 15 years of State program approval.

The amendments throughout subsection (b) include several references to the goal of attaining water quality standards and making reasonable further progress towards attainment of water quality standards. One consistent theme runs throughout the section, however: specific and unrealistic deadlines should not be mandated from Washington, D.C. Instead, each state should tailor its program so that reasonable further progress can be made. A rigid 15 year deadline, particularly without interim goals and milestones, can be counterproductive and lead to needless litigation or prematurely imposed enforceable mechanisms. Therefore, the Committee does not intend this section to establish an absolute deadline of 15 years for attainment of water quality standards.

For purposes of this section, reasonable progress toward water quality standards attainment may be demonstrated by a variety of measures and mechanisms. Adequacy of Federal funding is a factor in determining reasonable progress. The program also must include identification of goals and milestones for attaining water quality standards, including a projected date for attaining such standards as expeditiously as possible, but no later than 15 years from the date of program approval. Again, however, the intent of the Committee is that the 15 year date be an overall goal of each program. The real measure of success will be whether each state can demonstrate reasonable further progress on a periodic basis.

In addition, subsection (b) adds a new section 319(b)(7) in recognition of agricultural programs. Compliance with approved whole farm or ranch natural resources management plans will constitute compliance with the State management program if certain conditions are met.

In section 319(b)(7), the word "program" refers to the process of developing voluntary whole farm and ranch natural resource management plans that, when implemented, will achieve water quality results consistent with a State's nonpoint source management program. The Memorandum of Agreement (MOA) between the Governor and the Chief of the Natural Resources Conservation Service (NRCS) or their designees should outline the scope of the voluntary natural resources management plans that will be developed for individual farms or ranches.

The MOA should focus on the process and the anticipated water quality results in a given State. In order to facilitate the tailoring of plans for site-specific conditions and operations, specific conservation practices or management techniques for an individual farm or ranch would not be prescribed in the MOA. In developing the MOA, NRCS and the State should strive for maximum flexibil-

ity due to the variability of farm and ranch operations and resource conditions such as geology, soils, climate, crops and so forth that occur within the State. An individual farm and/or ranch plan should be approved and considered to be in compliance with the requirements of this section, as established in the MOA, for a period of no less than the five-year duration of the MOA. It is anticipated that practices specified in individual plans may be implemented in varying time frames within the duration of the plan, and implementation should not be interrupted by frequent plan revisions. The MOA must recognize the need to encourage farmers and ranchers to develop and implement whole farm and ranch plans by allowing reasonable implementation time periods, for example, time periods that provide for economic recovery of costs. The farmer may request a plan revision at any time and should request a revision to accommodate any significant operational changes or unforeseen technical problems within the farming/ranching enterprise.

Subsections (c) and (d) include numerous provisions on submission, review, and approval of state management programs. In particular, subsection (d) authorizes EPA to review State programs and, in limited instances, to prepare and implement a program for a given State. This is just one of several examples of retaining accountability—i.e. safeguards to ensure enviromental progress.

Subsection (e) expands opportunities for technical assistance to states under existing section 319 by making implementation, not just development, of programs eligible for assistance.

Subsections (f) and (h) authorize funding for technical and financial assistance by EPA including grants for preparing and/or implementing reports and programs. These are certainly some of the most significant provisions in the bill, in part, because they recognize the need for increased attention and resources for nonpoint source pollution. Subsection (f) increases the Federal cost share from 60% to 75% and requires EPA to establish an allotment formula for distribution to the States. The bill also expands eligible uses of funds. EPA is authorized to withhold grants to States that are not in compliance. Subsection (h) increases program funding levels $50 million each year from $100 million for fiscal year 1996 to $300 million for FY2000.

Subsections (g) and (h) recognize the importance of ground water protection by raising the existing cap on ground water/nonpoint source grants that any one state may receive from $150,000 to $500,000 and by increasing the annual cap for the national nonpoint source program from $7.5 million/year to $25 million/year.

Subsection (i) modifies current section 319 provisions on consistency of other projects and programs with State 319 programs. The bill requires a Memorandum of Understanding between a State and Federal agency that owns lands within the watershed covered by the nonpoint source program to coordinate nonpoint source control measures.

Subsections (j) and (k) include various provisions on reports of the Administrator and set-asides for administrative personnel.

Subsection (l) directs EPA to publish guidance on model management practices and measures for consideration by the States.

The Guidance on Model Management Practices and Measures is a true "guidance" document, to be used by States at their discretion in developing State nonpoint source management programs. The measures and practices specified in this guidance can only be general in design, since specific measures and practices must be appropriately designed to meet the unique geologic and hydrologic characteristics of the area. For agricultural measures and practices, the guidance should appropriately defer to Local Field Office Technical Guides. The definition of Model Management Practices and Measures should also consider whether the measure or practice is economically achievable for an individual participant.

Subsection (m) includes an unfunded mandate safeguard, i.e., compliance dates are delayed one year for each year Congress does not appropriate 100% of authorized funds, unless EPA and the State jointly certify that the amounts appropriated are sufficient to meet the requirements of this section. The Committee recognizes that adequate funding is crucial to the success of any nonpoint source program.

Subsection (n) repeals section 6217 of the Omnibus Budget Reconciliation Act of 1990, but at the same time folds some of the successful aspects of the coastal zone management program into section 319 of the Clean Water Act.

For example, sections 319 (a) and (b) are amended to require States to identify critical areas, taking into consideration the value of coastal areas. For coastal areas, each State program must include an identification of land uses that individually or cumulatively cause or contribute to significant degradation of those coastal waters not attaining or maintaining water quality standards and those coastal waters threatened by foreseeable increases in pollutant loadings. In addition, States must cooperate with coastal zone management agencies in developing reports and management programs under this section.

Subsection (o), agricultural inputs, clarifies that land application of agricultural inputs, including livestock manure, is not a point source and is regulated only under section 319—and not subject to citizen suits.

Agriculture involves the purposeful disturbance of land surfaces, the application of crop nutrients, animal manures and protection products to augment and enhance natural processes in the production of food and natural fiber. While farmers and ranchers can manage these nonpoint source activities, they cannot be controlled in the same fashion as point source activities. Runoff from nonpoint source activities is largely the consequence of natural hydrologic and geologic occurrences beyond the control of farmers and ranchers. That is why Congress has chosen to address diffuse, nonpoint source activities like land application of livestock manure and agricultural inputs, in a separate nonpoint source section, with States responsible for determining how best to work with farmers and ranchers in managing nonpoint source runoff. This section clarifies and strengthens the statutory distinction with respect to these agricultural nonpoint source activities.

Subsection (p) amends section 319 of the Act to include an overriding purpose: to assist states in addressing nonpoint sources of pollution where necessary to achieve the goals and requirements of

the Act. The provision further recognizes 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 the Act.

Section 320. National Estuary Program

Section 320 of the bill amends section 320 of the Act to make a technical correction to the listing of priority estuaries in existing law and adds Charlotte Harbor, Florida, and Barnegat Bay, New Jersey, to the priority list. This section also authorizes $19 million a year for fiscal year 1996 through 2000 and allows such funds to be used for grants for monitoring of implementation in addition to grants for the development of conservation and management plans.

Section 321. State watershed management programs

Section 321 of the bill establishes in the Clean Water Act a comprehensive, new section on watershed management. Throughout the Committee's hearings—both this Congress and last—and in countless governmental and nongovernmental meetings, reports, and recommendations, there has been remarkable consensus on the need for a watershed-based, "hollistic" approach to water pollution control. Section 321 responds to this need by establishing in the Act an entirely voluntary mechanism for States to use and coordinate existing authorities and to experiment with new authorities (such as pollutant transfer pilot projects) to increase the focus on watersheds.

The Committee recognizes that the "watershed-based approach" is not a new concept to the Clean Water Act. For example, many of the provisions in sections 208, 314, 319, and 320 already explicitly or implicitly refer to or rely upon management principles that focus on watersheds. Section 321, however, will provide even greater focus by providing various incentives and removing potential obstacles.

For example, some of the incentives include: (1) expanded eligibility of watershed planning and implementation activities for financial assistance; (2) increased flexibility for issuance of point source permits; (3) opportunities for pollutant transfers (trading); (4) multipurpose grants; and (5) additional planning set-asides.

While section 321 is many things, it is not a new regulatory program or mechanism for EPA or states to expand regulatory authorities. Like section 319 and other sections in title III, new section 321 is intended to be a program for planning, managing, and coordinating. It does not include new regulatory powers for the control of pollution sources that could not be controlled under other Clean Water Act sections. Instead, it embodies the belief that States can generally achieve water quality standards most effectively and expeditiously at the local watershed level by coordinating these multiple authorities in concert with the active involvement and cooperation of "stakeholders" in that watershed, who are in the best position to identify problems and design and implement suitable solutions.

Subsection (a) establishes a new section 321 in the Clean Water Act.

A State may submit a watershed management program at any time, and expedited program approval is provided for if a program contains minimum elements on program structure, scope, watersheds covered, requirements, goals, and consistency with the nonpoint source and stormwater sections.

A State is provided significant flexibility in establishing the scope of the program with respect to watersheds, pollutants and factors to be addressed. This allows a State to tailor program capabilities to water quality problems specific to the State, and reflects the extent of the State's resources and capabilities. To ensure local input, the State is to take into account all regional and local watershed management programs, and consider recommendations from units of local government and water suppliers and agencies.

To encourage prioritization in use of the watershed approach and scarce resources, a State is required to take into consideration those waters where water quality is threatened or impaired or otherwise in need of special protection in identifying which watersheds will be addressed. Management units for multistate watersheds may be included if jointly designated by the States, and may include Federally owned or managed waters and associated lands.

To facilitate flexibility in applying the watershed approach at the local level, a State may go beyond the goals and objectives of this Act and include State water quality standards, including site-specific standards in identifying goals to be pursued in each watershed. However, Federal requirements and authorities apply only to the stated goals and objectives of this Act. For purposes of this section, the term "site-specific" is intended to clarify that a State may establish standards different from a statewide standard for a particular water body or section of a river or stream, to the extent deemed necessary and appropriate to reflect that site or area's unique water quality attributes. It is not intended to apply to a particular point or nonpoint source.

A State may submit modifications for an approved program to the Administrator at any time, which shall remain in effect until or unless the Administrator determines the program no longer meets requirements. Each State with an approved program shall provide an annual summary status report to the Administrator. In an effort to reduce paperwork burdens, this report may also be used to satisfy reporting requirements under other sections of the Act. Responsible entities for multistate watersheds shall be jointly determined by the States involved.

Approved State programs and specific watershed plans could receive funding under various existing CWA authorities. As an incentive for local watershed management, expanded eligibility for assistance is established for watershed management costs associated with activities such as analysis, standard setting, identification and coordination of projects, activities and institutional arrangements, training, and public participation.

For a watershed already attaining water quality standards, a plan need only identify how standards will be maintained for approval by a State with an approved program. To help ensure that a local watershed plan will be compatible with State water quality obligations under this Act, additional conditions are established for watershed plans including impaired areas, including identification

of problems and how standards will be met consistent with this Act's deadlines.

A State with an approved program has the flexibility to deem approval of a local watershed plan, including interim milestones, to be in effect for up to 10 years.

To assist States, the Administrator is required to issue guidance within one year on provisions that States may consider for inclusion in watershed programs and local plans. States and other interested parties are to be consulted in development of the guidance. This guidance is not an enforceable mechanism. States are not required to use the guidance, in whole or in part, as a condition of program or plan approval, so long as minimum requirements of this section are satisfied.

This section establishes a pilot project under which a discharger or source may apply for approval to offset the impact of its discharge by arranging for another discharger or source to implement controls or measures through a pollution credits trading program established as part of a watershed plan. Arrangements could include payment of funds. If a State so chooses, this pilot project allows selective approval of pollutant trading within a watershed if appropriate safeguards are included. The Administrator shall facilitate the pilot project by allocating funds to pollution credits programs in selected watersheds throughout the country. A report is to be submitted to Congress on the results of this pilot program within 36 months of enactment.

From a water quality perspective, trading is most feasible if it occurs within the context of an integrated watershed planning process to ensure that the net reduction occurs in the same receiving waters. Pollutant trading within a watershed can provide overall water quality progress more flexibly and cost-effectively. Currently, some sources are expected to experience sharply increased costs, and even financial hardship, for the next increment of pollution discharge reduction in revised NPDES permits, in waters that remain impaired despite expensive efforts already undertaken to date. The same or greater reductions might be accomplished at a significantly lower cost through pollutant trading, particularly in those instances where more affordable best available technologies may have already been utilized to eliminate the majority of discharges in earlier staged reductions.

A properly designed pollutant trading program can be a positive incentive for the development and implementation of local watershed plans. Effective development and implementation of a local watershed plan hinges upon willingness by all stakeholders to participate.

Subsection (b) includes additional incentives for states to develop watershed programs.

Specific incentives that benefit permitted point sources are provided to encourage watershed management. A permitted source that does not have a history of a significant noncompliance may be issued a discharge permit with a limitation that does not meet standards if the receiving water is located in a watershed with an approved plan that contains assurances that standards will be met by a specified date through the combined efforts of both point and

nonpoint sources. Permit extensions in such a watershed are also permissible in order to synchronize permit terms.

The Administrator may provide a multipurpose grant for a State's approved watershed program, combining funds available under different sections of this Act and applying terms that apply for more than one year. This is intended to reduce administrative burdens for both the State and the Agency and provide flexibility to a State in focusing on priority activities. A State may also reserve limited additional funds for development of local watershed plans if half is made available to local entities. This encourages a State to make more planning funds available to local entities.

Section 322. Stormwater management programs

State Programs. Subsection (a) of the bill adds a new section 322 to the Act which replaces the current section 402(p) stormwater permitting program with mandatory State stormwater management programs.

Section 322 recognizes that stormwater discharges are more characteristic of nonpoint sources and are fundamentally different from point sources whose discharges are more readily predictable and controllable. To avoid the continued imposition of significant control costs and regulatory burdens that have resulted in little, if any, water quality improvement, the Committee has removed certain stormwater management from the permitting requirements of section 402 of the Clean Water Act.

Rather than imposing a national permitting scheme, the bill directs States to assess State waters, determine what categories and subcategories of stormwater discharges should be subject to controls, and identify control measures to be taken by those categories and subcategories to allow attainment of applicable water quality standards. The intent of the Committee is to remove the costly requirements of the existing section 402(p) stormwater management program that creates bureaucracy and red-tape unrelated to environmental benefits. The new State-run program will allow a State to target both waters adversely impacted by stormwater pollution and categories of dischargers, and then gives the State the broad authority and flexibility to control pollution from stormwater discharged by those categories.

Purpose. Subsection (a) of the new section 322 identifies the purpose of the section, which is to help States develop cost-effective stormwater pollution controls in an expeditious manner to allow States to meet the goals and requirements of the Act no later than 15 years from the date of approval of a State stormwater management program.

State Assessment Reports. Subsection (b) requires States to prepare an assessment report identifying those navigable waters that the State does not reasonably expect to attain or maintain applicable water quality standards or the goals and requirements of the Act, without controls on stormwater discharges to those waters. The State assessment report also must identify those categories and subcategories of dischargers that add significant pollution from stormwater discharges to the waters that the State identifies in the assessment report and that are a contributing cause of the State's

determination that such waters will not attain or maintain water quality standards or the goals and requirements of the Act.

The categories of discharges that are potentially subject to control are stormwater discharges from municipal storm sewers and industrial, commercial, oil, gas, mining, and construction activities. These categories include approximately 7.7 million commercial and light industrial facilities and thousands of small municipalities that are Phase II dischargers potentially subject to permitting under section 402(p) as currently in effect. Under new section 322, States have the flexibility to exempt de minimis contributors of pollution (such as small businesses, small municipalities, and small construction sites) from regulation. The Committee does not believe that it is essential for every activity with stormwater runoff and every municipality to be included in the State's stormwater management program.

The State assessment reports also must identify the process the State proposes to undertake to identify measures for controlling pollution from the categories and subcategories of stormwater discharges that will be subject to the State program.

Finally, the State assessment report must identify and describe existing or proposed State, local, and if appropriate, industrial programs for controlling pollution from stormwater.

The intent of this section is to allow each State to develop a program that is tailored to its needs. Accordingly, the bill allows States to target facilities and municipalities and to target receiving waters.

The State must provide notice of and an opportunity for comment on the State assessment reports. However, the decisions made by the State that are discussed in the report, including identification of dischargers (both municipal and nonmunicipal) that add "significant pollution" to navigable waters and navigable waters that require protection under the State Stormwater Management Program are matters committed to the discretion of the State.

The assessment report must be submitted to EPA for approval within 18 months of enactment and must be reviewed, revised and submitted to EPA for approval every 5 years thereafter.

State Stormwater Management Programs. Subsection (c) requires each State to develop a State stormwater management program, in conjunction and cooperation with affected local governments, that will be implemented during the first five years after program approval. The elements of the State program are spelled out in paragraph (2).

Model Management Practices and Measures. Paragraph (2)(A) requires States to identify model management practices and measures to reduce pollutant loadings from each category or subcategory of stormwater discharges targeted by the State for regulation. States may utilize such model management practices and measures identified by EPA in guidance issued pursuant to new section 322(l). The identification of model management practices and measures in a State program is not intended to preclude facilities from implementing stormwater pollution prevention plans that identify other effective measures for the control of stormwater pollution.

Programs and Resources. Paragraph (2)(B) requires States to identify the programs and resources it has determined are nec-

essary to provide for reasonable further progress toward and achievement of the goal of attaining water quality standards (that include stormwater criteria) by not later than 15 years from the date of program approval.

Industrial, Commercial, Oil, Gas, and Mining Discharges. Paragraph (2)(C) requires States to develop a program for categories and subcategories of industrial, commercial, oil, gas, and mining activities that provide incentives to implement pollution prevention practices and eliminate the exposure of stormwater to pollutants.

This section establishes a hierarchy of regulatory frameworks. For noncontract facilities, described below, the hierarchy begins with voluntary pollution prevention plans and proceeds, if the State determines it is necessary, to general permits and then site-specific permits. For contract facilities, also described below, the hierarchy begins with enforceable pollution prevention plans and proceeds to general and then site-specific permits as determined to be necessary by the State.

Noncontract facilities. Facilities where stormwater has no contact with material handling equipment, heavy industrial machinery, raw materials, intermediate products, finished products, byproducts or waste products at the site of an industrial, commercial, oil, gas, or mining facility potentially subject to regulation under this section, are not subject to enforceable stormwater pollution controls. However, the State programs should encourage the use voluntary pollution prevention planning to control the introduction of pollutants to receiving waters from stormwater discharges. A facility where stormwater comes into incidental contact with buildings and motor vehicles only shall be considered a noncontact facility. Currently, under EPA's interpretation of section 402(p), such noncontact facilities are not regulated.

Pollution Prevention Plans. For facilities where stormwater does come into contact with such materials, each State program must require enforceable pollution prevention plans. The minimum requirements for the enforceable pollution prevention plans are set forth in subsection (d) and are more stringent than pollution prevention plans currently required under general stormwater permits. Such pollution prevention plans are self-implemented and self-certified, but must be kept available for State review. If, upon review, the State determines that the plan does not meet the requirements of subsection (d), the State may require the facility to amend its plan and may take enforceable action against the facility under section 309 of the Act.

General Permits. A State program may propose to require general permits for categories and subcategories of stormwater discharges where the State finds, after providing notice and an opportunity for comment, that reasonable further progress towards achieving water quality standards (that contain stormwater criteria) in a particular receiving water cannot be made due to the presence of a pollutant or pollutants specified by the State imposes general permits on such categories and subcategories, despite the implementation of voluntary activities (if a non-contact is targeted) or enforceable pollution prevention plans (if a category where stormwater comes into contact with pollutants from facility materials is targeted). The bill does not set any minimum period of time

for implementation of pollution prevention plans by a category or subcategory before a State may make such a finding. The State may make this finding at any point after implementation of pollution prevention plans that the State believes it has adequate data to determine that this control mechanism alone will not result in reasonable further progress toward achieving water quality standards.

The State's identification of such categories and subcategories and pollutants is a matter committed to the discretion of the State. However, in the administrative proceeding provided under State law for the issuance of permits, a facility in a targeted category or subcategory shall have the opportunity to demonstrate that stormwater discharges from that facility are not contributing to a violation of a water quality standard established for designated uses of the receiving water and are not significantly contributing the pollutant or pollutants identified by the State. If the facility makes this demonstration, it shall not be subject to the proposed general permit. In accepting or rejecting any demonstration made by a facility under this subparagraph, the State shall apply the standards applicable to general permit decisions under State law. The State's decision to accept or reject the demonstration will be reviewable to the extent that general permits are reviewable under State law.

Site-Specific Permits. A State program may propose to require site-specific permits for categories and subcategories of stormwater discharges, or individual facilities in such categories or subcategories, whether the State finds, after providing notice and an opportunity for comment, that reasonable further progress towards achieving water quality standards (that contain stormwater criteria) in a particular receiving water cannot be made, unless the State imposes such permits, due to the presence of a pollutant or pollutants specified by the State, despite the implementation of voluntary activities (if non-contact facilities are targeted), or enforceable pollution prevention plans and general permits (if facilities where stormwater comes into contact with pollutants from site materials are targeted). The bill does not set any minimum period of time for implementation of general permits by a category or subcategory, or an individual facility, before a State may make such a finding. The State may make this finding at any point after implementation of general permits that the State believes it has adequate data to determine that this control mechanism alone will not result in reasonable further progress toward achieving water quality standards.

The State's identification of such categories and subcategories (or individual facilities) and pollutants is a matter committed to the discretion of the State. However, in the administrative proceeding provided under State law for the issuance of permits, individual facilities shall have the opportunity to demonstrate that stormwater discharges from that facility are not contributing to a violation of a water quality standard established for designated uses of the receiving water and are not significantly contributing the pollutant or pollutant identified by the State. If the State finds that the facility has met its burden and has made this demonstration, applying the standard applicable under State law for the issuance of site-

specific permits, the facility shall not be subject to the proposed site-specific permit. The State's decision to accept or reject the demonstration will be reviewable to the same extent that site-specific permits are reviewable under State law.

Small Business. For small businesses engaged in industrial, commercial, oil, gas or mining activities, States may not require general permits or site-specific permits unless the State finds that, without such permits, stormwater discharges from small businesses will have a significant adverse effect on water quality. The State's finding under this subparagraph is committed to the State's discretion. If the State makes this finding with respect to a category or subcategory of small business (or an individual business) such a category or subcategory (or individual business) shall be regulated in the same fashion as other industrial, commercial, oil, gas or mining activities. Paragraph (5) requires EPA to define small businesses for the purpose of this section.

Municipal Discharges. Paragraph (2)(D) requires States to develop a program for the reduction of pollution from municipal stormwater discharges sufficient to allow the State to meet the goals of this section and the Act. The State's identification, of those municipalities that will be subject to the State stormwater management program is a matter committed to the discretion of the State. However, it is the intent of the Committee that States work closely with local governments to develop the municipal stormwater program.

Construction Activities. Paragraph (2)(E) governs stormwater discharges from construction activities. The bill does not require States to regulate construction activities in the same fashion as industrial, commercial, oil, gas or mining activities generally. The Committee recognizes that for construction activities, many States already have stormwater runoff and/or erosion and sediment control requirements in place that are working to control stormwater runoff from construction activities through pollution prevention practices and measures. Accordingly, States must develop a program for construction activities that is consistent with current State and local requirements to avoid duplicative regulatory requirements.

The program for construction activities also must take into account land area disturbed by the construction activities and should consider differences in soil conditions, project duration, location, topography, and vegetation when identifying management practices and measures.

The program for construction activities also must focus on pollution prevention through model management practices and measures. States are encouraged to use voluntary programs and enforceable pollution prevention plans in lieu of a permitting framework to require implementation of pollution prevention management practices.

The State may impose 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. This finding shall be reviewable in the context of any applicable permit appeal proceeding. Such re-

view shall be in accordance with procedures and standards applicable to permit decisions under State law.

States retain the flexibility to reduce (as well as increase) controls established for categories and subcategories of industrial, commercial, oil, gas, mining or construction activities based on the State findings and facility demonstrations provided for in this section. Thus, not only do facilities have an incentive to prevent stormwater pollution to avoid increased controls, they have the incentive to reduce any stormwater pollution that is the basis for a permitting requirement or an effluent limitation to work their way "back" to enforceable pollution prevention planning with a goal of "no contact" (where economically and technologically feasible) and voluntary pollution prevention activities. Thus, the public and the environment benefit by a net reduction in discharges of identified pollution to waters and improved water quality and dischargers and States benefit by reduced administrative burdens.

Bad Actor Provisions. Notwithstanding any other requirements of this section, a State may take any action it deems necessary to address stormwater discharges from bad actors. Accordingly, Paragraph (2)(F) requires State stormwater management programs to include a bad actor provision that specifies that programs for specific types of dischargers (and any hierarchy of controls specified in those programs) are superseded where the State identifies, after notice and an opportunity for a hearing, a discharger that has a history of stormwater noncompliance under the Clean Water Act, State law, or implementing regulations, permits, orders, or administrative actions, or poses an imminent threat to human health and the environment. The State stormwater management program need not spell out what specific actions the State will take against particular bad actors.

The identification of a discharger that has a history of stormwater noncompliance or poses an imminent threat shall be subject to the same standards and procedures applicable to formal adjudications under the State law governing administrative procedure. The discharger's right to review shall be dependent on State administrative law and whatever due process State law requires for the actions the State proposes to take against the bad actor.

In identifying bad actors, the State may rely on a discharger's failure to comply with stormwater requirements in existence prior to the date of enactment of this bill. However, a discharger subject to section 402(p)(6) (a Phase II discharger) is not a bad actor solely by reason of a failure to obtain or apply for a stormwater discharge permit. In addition, a discharger subject to section 402(p)(4) (a Phase I discharger) is not a bad actor solely by reason of a failure to obtain a stormwater discharge permit if the discharger submitted a complete stormwater permit application as required under section 402(p) (including those facilities that were part of an approved group stormwater permit application) prior to the date of enactment of this bill in a timely fashion.

Schedule. Under Paragraph (2)(G), each State stormwater management program must include a schedule for making reasonable progress toward attainment of the goal of meeting water quality standards (which contain stormwater criteria) within 15 years of the date of program approval. The goal of the program is meeting

water quality standards. However, the state programs are developed as five-year implementation plans. The State program must be updated and revised after each five-year internal. The Committee does not expect that water quality standards will be met in all waters impacted by stormwater discharges in the first five years of program implementation. However, a State program must make reasonable further progress toward the goal of attaining water quality standards.

Reasonable further progress may be shown by any combination of improvements in water quality, documented implementation of voluntary stormwater discharge control measures, or adoption of enforcement stormwater discharge control measure.

Certification of Adequate Authority. Under Paragraph (2)(H), a State must certify that it has adequate authority to implement the stormwater management program, or list additional authorities that will be necessary to implement the program and a commitment to seek such additional authorities as expectiously as possible. It is the intent of the Committee that States be able to use existing authorities to the maximum extend possible under State law, including existing permitting authorities, to implement this program.

Identification of Federal Financial Assistance Programs. Paragraph (2)(I) requires a State to identify Federal financial assistance programs and Federal development projects that the State will review for their effect on water quality and for consistency with the State's stormwater management program.

Monitoring. Paragraph (2)(J) requires States to describe the monitoring of navigable waters that will be carried out for the purpose of assessing the effectiveness of the State program.

Identification of Certain Inconsistent Federal Activities. Paragraph (2)(K) requires States to identify activities on Federal lands that are inconsistent with the State management program.

Identification of Goals and Milestones. Paragraph (2)(L) requires the State to identify goals and milestones for achieving progress toward the attainment of water quality standards (that include stormwater criteria), including a projected date for attainment that cannot be later than 15 years from the date of program approval.

Utilization of Local and Private Experts. Paragraph (3) requires a State to involve local public and private agencies and organizations with expertise in stormwater management when developing and implementing the State stormwater management program. Private organizations include industrial facilities and related trade associations, including those whose expertise in stormwater management was developed from participation in EPA's group stormwater permit application process.

Development on a Watershed Basis. Paragraph (4) requires States to develop and implement State stormwater management programs on a watershed basis to the maximum extent practicable.

Regulations Defining Small Businesses. Paragraph (5) requires EPA to issue regulations defining small businesses for the purposes of this section. In defining small businesses, the Committee expects EPA to consult with the Small Business Administration Office of Advocacy and to examine the definition of small business used in other environmental statutes.

Stormwater Pollution Prevention Plans. Subsection (d) sets forth the requirements for the stormwater pollution prevention plans that must be implemented by industrial, commercial, oil, gas, and mining facilities under subsection (c)(2)(C)(ii). If equivalent, State or local erosion control plans, or spill prevention, control and countermeasure plans may qualify under this subsection as a stormwater pollution prevention plan.

A facility that is complying with a stormwater pollution prevention plan meeting the requirements of this subsection shall not be subject to permits, mandatory model management practices and measures, analytical monitoring, effluent limitations or other numerical standards under section 322(c)(2)(C)(ii).

Administrative Provisions. Subsection (e) of new section 322 includes administrative provisions.

Cooperation Requirement. Subsection (e)(1) requires a State to develop both the State assessment report and the State stormwater implementation plan in cooperation with local, substate, regional, and interstate entities which are responsible for implementing a stormwater management program.

Time Period for Submission of Management Programs. Subsection (e)(2) requires States to initially submit their stormwater management programs to EPA within 30 months of the date that EPA issues its guidance on model stormwater management practices and measures (as required under subsection (1) of new section 322). Every five years, States must resubmit their program to EPA along with a demonstration of reasonable further progress toward the goal of attaining water quality standards (that contain stormwater criteria) and a documentation of the degree to which the State has achieved the interim goals and milestones contained in the previous program submission. The State's demonstration shall take into account the adequacy of Federal funding under this section.

Transition. Subsection (e)(3) identifies the rules that apply during the period of time from enactment of this section to the date a State program is approved. Notwithstanding the repeal of section 402(p), section 402(p) remains in effect during the transition period only as authority for permits and enforcement measures as provided for in section 322. All permits issued pursuant to section 402(p) remain in effect, except as provided for in this subsection, until superseded by an approved State stormwater management program. Stormwater dischargers operating under permit applications because no permit has yet been issued, shall continue to operate under the terms and conditions in the permit description that accompanies the application, unless the permitting authority disapproves the application.

All conditions of those permits and permit applications, including requirements for the payment of fees, also remain in effect unless and until such conditions are modified by the State. However, prior to the effective date of the State stormwater management program, a stormwater discharger may request the State or EPA, as applicable, to modify its stormwater permit. For example, the discharger may seek approval to have effluent limitations or numerical standards removed from the permit.

Notwithstanding the repeal of section 402(p), during the transition period after the date of enactment of the bill and before the effective date of a State stormwater management program, States shall retain any authority conferred by section 402(p) to enforce the permitting requirements that section imposed on Phase I stormwater dischargers. However, any stormwater discharger (both municipal and nonmunicipal) that is complying with a stormwater discharge permit or application continued in effect under this section shall not be subject to citizen suits under section 505.

Any new nonmunicipal facility that begins operation during this transition period that would have been a Phase I facility if it had commenced operation prior to the date of enactment of this Act, shall be subject to any applicable general permit that covers its type of operations. To be in compliance with this section, such facilities are required to notify the State or Administrator that the facility intends to be covered by and shall comply with such permit.

If there is no general permit applicable to the new nonmunicipal facility, the State may impose enforceable stormwater management measures under this section, State authorities, or section 402(p) of the Clean Water Act as in effect prior to the date of enactment of this Act, if the State finds that the stormwater discharge is likely to impose an imminent threat to human health and the environment or to pose a significant impairment of water quality standards. Such a finding is committed to the discretion of the State.

In recognition of the valuable information such dischargers have collected, the considerable resources expended upon such applications, the technical sophistication and relatively high compliance rates of such dischargers, an industrial facility that is included in a part 1 group stormwater permit application approved by EPA under 40 C.F.R. section 122.26(c)(2), may choose to immediately implement a stormwater pollution prevention plan consistent with subsection (d) of new section 322 in lieu of continued operation under existing permits. This option is available during the transition period only. To exercise this option, the facility must certify to the State, or EPA as appropriate, that it is operating under stormwater pollution prevention plan that is consistent with subsection (d). Upon such certification, the facility shall no longer be subject to its existing permit. However, failure to implement and comply with a stormwater pollution prevention plan that is consistent with subsection (d) shall be a violation of the Act subject to enforcement under section 309 and citizen suits under section 505.

Stormwater discharges for which permits were required under section 402 prior to the 1987 amendments (which added section 402(p) to the Act) are not addressed under new section 322. Such stormwater discharges remain point source discharges subject to section 402.

Notwithstanding the fact that permits under section 402(p) are continued in effect during the transition period, the antibacksliding provisions of section 402(o) shall not apply to any modifications of permits that may occur during the period of time between the date of enactment of this Act and the effective date of a State stormwater management program. Of course, section 402(o) has no application to a State stormwater management program, when implemented.

Approval or Disapproval of Reports or Management Programs. Subsection (f) provides EPA with the authority to approve or disapprove a State assessment report or a State stormwater management program (or portion of a management program). If EPA does not disapprove a report or program within 180 days of submission, the report or program shall be deemed to be approved.

To disapprove a proposed State stormwater management program (or a portion of a program), EPA must determine, after providing notice and an opportunity for comment, that (1) the proposed program does not contain the elements required by this section, (2) the proposed program will not satisfy the goals and requirements of the Act, (3) the State does not have adequate authority or resources to implement the program (or portion being disapproved), or (4) the practices and measures that the State proposes to implement will not result in reasonable further progress toward the attainment of water quality standards.

To disapprove a program or portion of a program, EPA also must notify the State within six months of the date the State submitted the program to EPA of the revisions or modifications necessary for approval. The State then shall have an additional six months from date of notification of disapproval to revise and resubmit its program and EPA shall have an additional three months from the date of receipt of the revised program to approve or disapprove it.

When reviewing a State stormwater management program, EPA shall not condition approval of a State's program unless it makes the determinations provided for in subsection (f)(2).

Federal Takeover of State Programs. If a State does not submit a State assessment report (which under subsection (b) must be submitted within 18 months from the date of enactment) by the date which a State stormwater management program must be submitted to EPA, EPA must prepare an assessment report for the State.

If a State does not submit a stormwater management program, or if EPA disapproves the proposed State program, EPA shall prepare and implement a stormwater management program for the State.

If, upon reviewing a program submitted for renewal five years after the date of initial program approval, EPA determines (after taking into account the level of funding provided compared to the level authorized) that the State has not demonstrated reasonable further progress toward attainment of water quality standards, the State shall have 12 months to revise its program in a manner sufficient to achieve water quality standards within 15 years from the date of initial program approval. If the State fails to revise its program or EPA disapproves the revision, EPA shall prepare and implement a stormwater management program for the State. EPA's disapproval of the revision also shall be subject to notice and comment.

As an alternative to Federal takeover of a State stormwater management program under this subsection, EPA and a State may approve a program submitted by a unit of general purpose local government or a local public agency or organization. If the State agrees, a local public agency or organization may seek technical assistance from EPA to develop such a program, which may be applicable to subsections of the State that EPA determines are of suffi-

cient geographic size to allow implementation of a separate stormwater management program.

If EPA or a local agency implements a State stormwater management program, or a portion of a State program, that agency shall have the responsibilities and authorities for program implementation placed upon or provided to the States by the new section 322 and shall comply with the requirements imposed on States under this section.

Interstate Management Conference. Under subsection (g) a State may ask EPA to convene an interstate management conference if a portion of the State's navigable waters are not meeting water quality standards or the goals or requirements of the Clean Water Act because of pollution from stormwater discharges that originate in another State. If EPA determines that the State has correctly identified stormwater discharges originating in another State as the source of its water quality problem, EPA shall notify the affected States and convene an interstate management conference within 180 days of such notification.

The purpose of the management conference is to develop an agreement among the affected States relating to pollution from stormwater discharges. If the States reach agreement, their State stormwater management programs shall be revised to reflect that agreement.

Grants for Stormwater Research. For the purpose of determining the most cost-effective and technologically feasible means of addressing pollution from stormwater discharges and to develop stormwater criteria, subsection (h) authorizes $20 million annually to be awarded by EPA for grants for State and local demonstration projects and research to (1) identify adverse impact of stormwater, (2) identify pollutants in stormwater that have an adverse impact, and (3) test innovative approaches to address the impacts of source controls and model management practices and measures.

For each year that Congress fails to appropriate the full $20 million authorized under this subsection, any deadlines established in a State program for compliance with water quality standards shall be postponed by one year.

Development of Stormwater Criteria. Subsection (i) requires EPA to develop stormwater criteria as an element of water quality standards established for designated uses of navigable waters by December 31, 2008. The stormwater criteria need not be numeric criteria. The criteria may include performance standards, guidelines, guidance, and model management practices and measures and treatment requirements. In addition, in developing such criteria, EPA should consider the importance of land-based transportation developments to national defense, Postal Service operations and interstate commerce.

Collection of Information. Subsection (j) requires EPA to collect and make publicly available information pertaining to model management practice and measures and implementation methods.

Reports of EPA. Subsection (k) requires EPA to submit a biennial report to Congress on activities and programs implemented under section 322 and progress made in reducing pollution in navigable waters from stormwater discharges.

Guidance on Model Stormwater Management Practices and Measures. Subsection (l) requires EPA to publish guidance on model stormwater management practices and measures. EPA's guidance must consider the fact that a State may choose to integrate its stormwater management program with its section 319 nonpoint source management program.

Enforcement. Subsection (m) specifies that State stormwater management programs are federally enforceable under sections 309 and 505 of the Clean Water Act.

Entry and Inspection. Subsection (n) specifies that a State has the right to enter and inspect any property at which there is a stormwater discharge or at which records required to be maintained under a State stormwater management program and located.

Stormwater Discharges Regulated Under a Watershed Program. A State that chooses to develop a watershed program under section 321 of the Act need not develop and implement a State stormwater management program for those stormwater discharges that are addressed under the State watershed program, which shall be deemed to be the State stormwater management program with respect to such discharges. However, subsection (o) specifies that the State's regulation of stormwater discharges under section 321 must be consistent with this section.

Consistency does not require duplication of a section 322 program within a section 321 program. However, if a State chooses to use the authority provided under section 322 to require a permit on a stormwater discharge in the context of a section 321 watershed program (which does not give States any authority to require permits for nonpoint sources of pollution), the State must make the findings and utilize the administrative procedures provided for under section 322. In addition, consistent with this section, a State may not under section 321 require compliance with numerical standards or limitations based on water quality standards until such standards incorporate stormwater criteria.

Mineral Exploration and Mining Sites. Subsection (p) clarifies how stormwater discharges from mineral exploration and mining sites are to be regulated following the date of enactment.

Stormwater discharges from mineral exploration sites are to be regulated in the same manner as stormwater discharges from construction activities, consistent with current law. Mineral exploration activities are generally of short duration and affect only a limited area where core drilling or bulk sampling is conducted. For exploration activities at inactive or abandoned mine sites, the operator's responsibility for control of stormwater is limited to the area disturbed by the exploration activity in order to provide an incentive for exploring such sites in historically mined areas without incurring liability for the ground not disturbed by the exploration operation.

Stormwater discharges from ore mining and dressing sites that are commingled with mine drainage and process wastewater are regulated as point source discharges under section 402, and not as stormwater discharges under section 322.

Stormwater discharges from abandoned mined lands are to be regulated under section 319, unless the State determines, in its

sole discretion, that regulation under section 322 is necessary to make reasonable further progress toward achieving water quality standards. However, due to the additional remediation authorities and resources available under the Surface Mining Control and Reclamation Act, abandoned mined lands subject to that Act shall be subject to section 319 only.

All other stormwater discharges from mining activities are regulated under section 322.

Section 322(b) of the bill repeals the limitation on permits for stormwater from agricultural return flows and oil, gas and operations under section 402(l). By repealing section 402(p) and the exemption in section 402(l), the Committee does not intend to change the Clean Water Act's current approach to agricultural stormwater runoff from cropland, pasture, rangelands and other agricultural areas. Diffuse agricultural runoff is addressed under section 319 and not the newly established section 322; stormwater runoff from oil and gas operations is regulated under new section 322; and stormwater runoff from mining operations is regulated as specified in new section 322(p), as discussed above.

Section 322(c) of the bill repeals section 402(p) of the Clean Water Act. Notwithstanding this repeal, authorities and requirements under section 402(p) remain in effect as provided for in this section until such time as a State stormwater management program is approved.

Section 322(d) of the bill defines the terms stormwater and stormwater discharge and amends the definition of point source.

Stormwater is defined as runoff from rain, snow melt, or any other precipitation-generated surface runoff.

Stormwater discharge is defined as a discharge from any conveyance used for collecting and conveying stormwater to navigable waters and which is associated with a municipal storm sewer or industrial, commercial, oil, gas, or mining activity. A conveyance shall include any ditch or channel formed by the runoff and is not limited to artificially constructed conveyances.

Stormwater discharges are excluded from the definition of point source.

Section 323. Risk assessment and disclosure requirements

Section 323 of the bill adds a new section 323 to the Act. This section is presented in two parts. First, the subsections of section 323 are briefly summarized in the order they appear in the bill. Second, the Committee's views regarding the intended effect of section 323 are described. Although this discussion focuses on the responsibilities placed on the Administrator of EPA, these responsibilities also generally apply to relevant activities performed by the Secretary of the Army.

Subsection (a) requires the Administrator of EPA to develop and publish a risk assessment before issuing any standard, effluent limitation, water quality criterion, water quality based requirement, or other regulatory requirement that is not a permit or a purely procedural requirement, and any guidance that, if a rule, would result in costs of $25 million or more per year.

Subsection (b) delineates the minimum contents of risk assessments. Risk assessments must identify and discuss data, assump-

tions, risk to specific populations or natural resources, and uncertainty.

Subsection (c) provides for the Administrator of EPA, in consultation with the Secretary of the Army, to issue guidance for conducting risk assessments covered under this section. The guidance shall be issued within 180 days of enactment.

Subsection (d) requires that EPA provide an explicit and practical quantitative description of any margin of safety relative to an unbiased estimate of the risk being addressed. In the past, margins of safety have been adopted in response to legislative requirements and at the discretion of the Agency.

Subsection (e) allows EPA to exempt from the requirements of this section, regulations that would result in costs of less than $25 million or more per year.

Subsection (f) establishes an effective date for these requirements as one year following the date of enactment of this section.

Under subsection (g) EPA must conduct risk assessments for regulatory requirements and guidance issued after February 15, 1995, that would result in costs of $100 million or more per year. Such reviews must be completed within 18 months of enactment of this section. The Committee notes that this provision and a similar provision under section 324 (subsection 324(f)(1)(B)) has, unfortunately, been widely mischaracterized and that these mischaracterizations have caused unnecessary confusion.[1] Thus far only one requirement, the Great Lakes Initiative issued in March 1995, would need to be reviewed under this subsection. Further, since rules costing $100 million or more are already required to be evaluated by EPA and the Office of Management and Budget under Executive Order 12866, the Committee expects that the retroactive review required by sections 323 and 324 will place little or no additional burden on EPA, assuming EPA has complied with the Executive Order.

Overall, the Committee intends that section 323 be consistent with the general risk assessment provisions of H.R. 1022, the Risk Assessment and Cost-Benefit Act of 1995, which passed the House of Representatives on February 28, 1995 by a vote of 286 to 141. Section 323 tailors the requirements of H.R. 1022 to the Clean Water Act.

Section 323 sets out minimum requirements for risk assessments that are performed in support of significant regulations and guidance. The thrust of these requirements is to fundamentally change the way EPA presents the results of risk assessments to decision makers. Three aspects of this section will lead to this change, each of which is described below.

First, the requirements of subsection 323(b) will ensure that the risk assessments reflect sound science. As Mary Jo Garries, Chief of Standards and Certification for Maryland's Department of the Environment recently noted, "Too often * * * in the rush to meet public demand for water quality protection, standards are hastily

[1] For instance, the retroactive coverage of section 324 has been described as repealing "23 years of existing major Clean Water Act standards by requiring extensive cost-benefit and risk assessment reviews for all major existing standards within an impossible deadline of 18 months." (Letter to Congress from Jay Hair of the National Wildlife Federation dated April 3, 1995.)

and imperfectly derived. The imperfections are frequently the result of inadequate science, which can take many forms." Specific requirements under sections 323(b) (1), (3), and (4) will require federal risk assessors to identify and use all relevant and readily obtainable scientific data and justify the selection of significant assumptions, inferences or models that could significantly change the findings of the risk assessment.

Second, section 323(b) will require EPA to produce best estimates (or similar unbiased descriptions) of the risk to be regulated. The Committee expects these estimates will be a principal product of risk assessments. Currently, EPA does not provide best estimates of the reduction in health and environmental risks a proposed regulation will achieve. Further, EPA typically does not describe the margin of safety a proposed standard incorporates. Both of these problems are caused, at least in part, by embedded and often hidden conservation assumptions in risk assessments. This results in estimates that reflect a degree of risk that is more serious than an unbiased estimate would indicate. For instance, EPA risk assessments for dioxin exceed those adopted by other governments by a factor of a thousand and exceed independently generated "most likely estimates" by a factor of 5,000.

The problems this presents for decision makers, including State policymakers who must use EPA risk assessments to set water quality standards, are significant. As a Department of Energy study concluded last year, "By design, many science policy decisions lead to risk assessment results that are more likely to overstate than to understate risks" and, unfortunately:

> Risk assessors often fail to emphasize the existence and extent of science policy in risk assessment. Where the role of science policy is not explicitly explained, risk estimates may be erroneously communicated to policy makers, risk managers, the media, and the public as uncontrovered fact. * * * Risk assessors should ensure that such miscommunication does not occur.[2]

The absence of best estimates further complicates policymaking in instances where risk assessments are used in conjunction with information on economic effects in making regulatory decisions (as opposed to using risk assessments to set health-based standards). EPA's current risk assessment process forces EPA decision makers to compare indeterminately conservative estimates of risk reduction against best estimates of compliance costs. Because the level of conservatism embodied in risk estimates may vary by more than a factor of ten, this necessarily warps the intent of policymakers who may otherwise believe they are making consistent and rational decisions regarding the expenditure of resources to protect public health and the environment.

A more logical structure for assessing risks in pursuit of health and environmental protection is to produce a best estimate (or similar unbiased characterization) of the risk along with a description of the uncertainty of the estimate and then make an explicit and deliberate policy decision regarding the margin of safety that

[2] U.S. Department of Energy, "Choices in Risk Assessment: The Role of Science Policy in the Environmental Risk Management Process," Washington, DC, 1994, p. 241 and 244.

is desirable. A margin of safety may be necessary in order to protect certain specific populations or subpopulations that are more sensitive to harm than the population or ecosystem in general or in order to take into account key uncertainties in the risk assessment, or because it is required by statute. Defining an explicit margin of safety is precisely the type of process engineers use in designing dams, bridges, or other structures whose failure could result in a significant loss of life or environmental damage.

Sections 323(b) (5) and (6) and subsection 323(d) address these problems. They will require EPA to provide best estimates (or other unbiased descriptions) of the risk being assessed, describe the uncertainty inherent in these estimates and explicitly identify and describe margins of safety adopted by the Agency. It is important to note that the best estimate (or other unbiased estimation) must include a description of the specific populations or natural resources the best estimate is based on. For instance, the prevalence and variability of the populations used could be critical to interpreting such an estimate.

The Committee recognizes that in order to meet these requirements EPA will have to attempt to separate questions of science from questions of policy. This is intentional. In 1983 the National Academy of Science recommended that:

> regulatory agencies take steps to establish and maintain a clear conceptual distinction between assessment of risks and consideration of risk management alternatives; that is, the scientific findings and policy judgements embodied in risk assessments should be explicitly distinguished from the political, economic, and technical considerations that influence the design and choice of regulatory strategies.[3]

However, the Committee also recognizes that policy and scientific determinations are often intertwined an can be difficult to segregate. These provisions of section 323 are intended to separate policy and scientific findings as much as is practical and require risk assessors to explicitly identify and describe policy decisions whenever they are made.

The third change section 323 invokes is the greater use of risk assessment results in setting EPA priorities. Subsection 323(b)(7) would require EPA to compare the nature and extent of a risk to other risks to human health and the environment. This reflects the importance of placing risk reductions in context and forcing some evaluation of whether resources being directed at the proposed risk reduction may be inadequate or may be better directed at other more important priorities.

Among its several uses, the use of risk assessment as a priority setting device offers the greatest opportunity for benefiting public health and the environment. Comparative risk can indicate where a reallocation of resources may result in greater environmental benefits at no increased cost to society. The Committee is concerned at the lack of prioritization that takes place within the water program and across EPA. Numerous bipartisan groups and experts including EPA's Science Advisory Board, the Carnegie

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[3] National Research Council, "Risk Assessment in the Federal Government: Managing the Process" (also known as the "Red Book"). National Academy Press, Washington, DC 1983, p. 7.

Commission on Science, Technology, and Government, the Environmental Working Group, former EPA Administrator William Reilly, and Supreme Court Justice Stephen Breyer have recommended that EPA's planning and budgeting process needs to reflect risk-based priorities.

The Committee expects that section 323 requirements for producing unbiased risk estimates and comparisons to other risks, along with establishing consistent guidelines for risk assessments, will make it easier to deliberately set priorities among water related regulatory activities, and compare these activities to other priorities outside of the water program. Such information will help future policymakers, including this Committee, determine how laws, regulations, and budgets should be changed to improve federal environmental programs.

Section 324. Benefit and cost criterion

Section 324 of the bill adds a new section 324 to the Act. This new section is presented in two parts. First, subsections of section 324 are briefly summarized. Following this, the Committee's views regarding the intended effect of this section are presented. Although the discussion of section 324 focuses on the responsibilities placed on the Administrator of EPA, they also apply to relevant activities performed by the Secretary of the Army.

Subsection (a) requires the Administrator of EPA to certify that new regulations (and new guidance that, if issued as a rule, would result in an annual increase in costs of $25 million or more per year) maximize net benefits to society. The requirement to maximize net benefits supplements and, to the extent there is a conflict, supersedes decision criteria otherwise applicable under the Clean Water Act, except that the resulting regulatory requirement or guidance must be economically achievable.

Subsection (b) directs EPA to issue guidance for conducting benefit-cost analyses within 180 days of enactment. The guidance shall include procedures for identifying policy alternatives and methods for estimating incremental benefits and costs.

Subsection (c) exempts from the requirements of this section permits, purely procedural requirements, water quality criteria, and water quality based standards.

Subsection (d) allows the Administrator of EPA the discretion to exempt from the requirements of this section any regulations that would result in costs of less than $25 million per year.

Subsection (e) sets out the general effective date of section 324 as one year from the date of enactment.

Subsection (f) requires EPA to review, using the criterion of this section, any regulatory requirements and guidance issued after February 15, 1995, if such regulations or guidance would result in costs of $100 million or more per year. As mentioned above, the effect of this requirement may need some clarification (see the summary of subsection 323(g) above).

Subsection (g) directs EPA to perform a study within 5 years of enactment regarding the precision and accuracy of benefit and cost estimates developed to comply with this section.

Overall, the Committee intends that section 324 be consistent with the benefit-cost provisions of H.R. 1022, the Risk Assessment

and Cost-Benefit Act of 1995 which passed the House of Representatives on February 28, 1995, by a vote of 286 to 141. Section 324 tailors these requirements to the Clean Water Act resulting in some important differences which are described below. None of these differences are intended to conflict with the requirements of H.R. 1022 but, rather, should supplement or complement the benefit-cost requirements of H.R. 1022.

As noted earlier in this report, since 1972 Clean Water Act regulations, and technology-based standards in particular, have resulted in significant improvements in the nation's water quality. For instance, the United States Geological Survey recently noted that the concentrations in fish of three important toxic elements (arsenic, cadmium, and lead) decreased by more than 50 percent nationwide from 1976 to 1986.[4] Nonetheless, there is evidence that the improvement in water quality has come at an unnecessarily high cost and the efficiency of Clean Water Act requirements will simply become increasingly worse.

A number of independent sources have recommended that future Clean Water Act regulations need to reflect a better balance between benefits and costs to society. Indeed, the limited data available indicate current regulations are extremely inefficient. One estimate placed the annual costs of compliance with Clean Water Act requirements in the mid-1980s at approximately $28 billion, while the benefits achieved over the same time period were approximately half this ($14 billion).[5] Further, a recent analysis indicates that under existing provisions of the Clean Water Act, future regulations may be even less cost-effective, resulting in costs that will outweigh benefits by as much as four to one.[6]

The purpose of section 324 is to ensure that future regulations reflect a rational and coherent allocation of society's resources. Over twenty years ago Bill Ruckelshaus, then Administrator of EPA, argued against the adoption of technology-based limits. He testified before this Committee: "Effluent limitations are a means for achievement. They should not become an end unto themselves, nor should they be defined in statutory law solely in terms of the technology needed to achieve them." He further stated:

> There must be a rational, sober evaluation of alternatives because we are always dealing with finite resources. For instance, the extraordinary costs which may be necessary to take the last five percent of pollutants from a specific effluent in a specific river basin may have no reasonable relationship to the benefits to be derived. Without a consideration of the nature and use of the receiving water, and the costs to society, we may be wasting resources which could be more effectively used to clean the air, dispose of solid wastes, or effectively address water pollution control in another body of water. As you well know, the alternative uses of finite resources are infinite.

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[4] USGS, "National Water Summary 1990–91, 1993, p. 135.

[5] See Freeman, A. M., Water Pollution Policy, in "Policies for Environmental Protection," edited by Paul Portney, pp. 122–127, Resources for the Future, Washington DC, 1990.

[6] Lyon, Randolph and Scott Farrow, "An Economic Analysis of Clean Water Issues", "Water Resources Research," January 1995, pp. 213–223.

(Testimony of William Ruckelshaus before the Committee on Public Works, December 7, 1971.)

On the same day, Russell Train, then the Chairman of the Council on Environmental Quality, predicted that:

> If we insist that the public pay—through tax revenues and increased prices for manufactured goods—many billions of dollars for water cleanup beyond the point where added benefits can be demonstrated or even assumed, I believe we will hurt the environmental cause in two ways: First, the public legitimately will question our wisdom on this and other environmental matters and perhaps feel that the measures needed to deal with environmental problems are being exaggerated. Second, the imposition of enormous incremental costs unsupported by water quality benefits attained will divert an inordinate amount of our resources from other environmental priorities, where they could be more effectively utilized. (Testimony of Russell Train before the Committee on Public Works, December 7, 1971.)

Despite Train's warning, the Clean Water Act was amended to incorporate technology-based limitations with a modicum of regard for benefit-cost considerations. Today the credibility of federal environmental regulations is strained and the allocation of environmental protection resources is patently out of line with any set of rational priorities. As Peter Rogers, a water policy expert at Harvard University states, "there is an urgent need to review the cost-effectiveness, the timetables, the attainability, and the prescriptive nature of the present technology-based standards and regulations."

The Committee believes it is important to make sure that new or revised federal regulations be justified by the benefits they will attain. If proposed regulations cannot meet such a test, they will need to be reworked to make them less costly or achieve greater benefits. The benefit-cost requirement embodied in section 324 will force regulators to place a higher value on the resources they compel taxpayers, consumers, and others to use to restore and protect the nation's waters. It is the Committee's intention that this requirement will spur greater innovation and flexibility in the ways federal regulations are formulated and will ultimately achieve greater environmental protection than existing approaches at less cost. For instance, this section should encourage regulators to seek out situations where environmental protection and economic growth do not conflict, but go hand in hand.

As mentioned above, section 324 contains some provisions that are different from those adopted in H.R. 1022. These include the criteria for benefit-cost review, the treatment of guidance, and exemptions from the review requirement. Each of these differences is described briefly below.

The most notable difference between section 324 and H.R. 1022 is the criteria for review. H.R. 1022 adopts three decision criteria:

> benefit-cost analyses are based on objective and unbiased scientific and economic evaluations of all significant and relevant information and risk assessments;

the incremental risk reduction or other benefits of any strategy chosen will be likely to justify, and be reasonably related to, the incremental costs incurred by society; and

that other alternative strategies identified or considered by the agency were found either (A) to be less cost-effective at achieving a substantially equivalent reduction in risk, or (B) to provide less flexibility to State, local, or tribal governments or regulated entities in achieving the otherwise applicable objectives of the regulation.

Section 324 adopts only one decision criterion: the regulation must "maximize net benefits to society" (section 324(a)(1)). The Committee believes that, for the purposes of the Clean Water Act, this standard is consistent with, and preferable to, the criteria listed in H.R. 1022 for the following reasons.

First, the Committee expects that the first criterion of H.R. 1022, that benefit-cost analyses will be based on complete and unbiased information, will be incorporated into the guidance that will be issued under section 324(b).

Second, the Committee notes that the second and third criteria of H.R. 1022, that incremental benefits be reasonably related to incremental costs and that the regulation must be the most cost-effective or flexible, are similar to standards already used under certain provisions of the Clean Water Act. For instance, applicants for permit modifications under section 302(b)(2)(A) of the Act must show that the costs of achieving a effluent limitation are not reasonably related to the benefits and a cost-effectiveness test is used to help determine best available technology (BAT) standards under section 301(b)(2) of the Act.

The Committee considers EPA's current implementation of these criteria as contrary to the intent of H.R. 1022 and section 324. For instance, as implemented under the Clean Water Act, the cost-effectiveness test does not always consider the option of no additional regulation (see, for instance, the list of options presented in "Cost-Effectiveness Analysis For Proposed Effluent Limitations Guidelines And Standards For The Coastal Subcategory Of The Oil And Gas Extraction Point Source Category" published by EPA in February 1995 on page 2–7). The Committee is concerned that EPA may consider its current interpretation of these tests as being consistent with the criteria of H.R. 1022.

The "maximize net benefits" criterion adopted in section 324 will solve this potential problem. For instance, it clearly requires EPA to consider all possible regulatory alternatives. In fact, because it may result in the selection of alternatives that could require a facility be closed (e.g., zero discharge that is not technically feasible), section 324(a)(2) limits the effect of the criterion by requiring the resulting regulatory requirement must be economically achievable. It is important to note that the "maximize net benefits" criterion does not conflict with cost-effectiveness and other criteria used in H.R. 1022, but, rather, subsumes them.[7]

The second reason the "maximize net benefits" criterion has been adopted for Clean Water Act requirements is that it will be admin-

[7] For a discussion of the relationship between benefit-cost criteria see Stokey, Edith and Richard Zeckhauser, "A Primer for Policy Analysis," Norton, New York, 1978, pp. 137–155.

istratively easier for EPA to implement than the three certifications under H.R. 1022. Since 1981, under President Reagan's Executive Order 12291, EPA has been required to estimate the costs and benefits of all new regulations. This requirement was renewed in 1993 under President Clinton's Executive Order 12866. Under these Executive Orders over 3,000 EPA rules have gone through benefit-cost review. The "maximize net benefits" test under section 324 would subject new Clean Water Act regulations to the identical benefit-cost analysis required under Executive Order 12866. Thus section 324 would compel no additional analysis beyond that already required, assuming EPA has been complying with Executive Order 12866.

A second important difference between section 324 and H.R. 1022 is that it covers not only significant regulations (which are covered by H.R. 1022) but other significant regulatory requirements and significant guidance (see subsections 324(a)(1) (A) and (B)). The Committee intends for section 324 to cover the same set of policy documents as has been covered by Executive Orders 12291 and 12866. These are "agency statements of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of the agency" (Executive Order 12866, section 3(d)). The Committee notes that many documents EPA releases as "guidance" (such as the Great Lakes Initiative) have a stronger effect than that word typically connotes and that these documents will be improved by benefit-cost review.

Finally, section 324 lists Clean Water Act-specific exemptions not found in H.R. 1022. These include the issuance of individual permits, purely procedural requirements, and, importantly, rules governing the formulation of water quality-based standards. The Committee does not intend that the consideration of benefits or costs confuse EPA's development of water quality criteria under section 304 of the Clean Water Act, which represent non-regulatory scientific assessments of ecological effects. Further, while the Committee believes water quality-based standards should not be promulgated by EPA unless they result in benefits that are at least reasonably related to the costs of compliance with such standards (see section 303), it is not the Committee's intention to require EPA to "maximize net benefits to society" when establishing water-quality based standards.

Benefit-cost analysis will not only result in better decision making at the first instance but will offer a baseline for determining whether regulations are, in fact, resulting in the benefits and costs that were anticipated. The Committee notes that federal policymakers are currently greatly restricted in what they can learn from the promulgation of past regulation because there is seldom a clear record of what was originally intended or expected. Section 324 should provide a basis for creating a feedback loop in the policymaking process so regulators can determine whether their original goals were met and what types of regulation may better protect human health and the environment at less cost.

As a final note, the Committee recognizes the difficulty regulators face in attempting to perform benefit-cost analysis. First, it

may be morally challenging. People often balk at admitting to the exchangeability of certain things. We would prefer to maintain that some things are beyond price. However, when society makes a decision to give up some of one good thing (e.g., reduced dredging of harbors) in order to get more of another good thing (e.g., reduced risk from contaminated sediments), a tradeoff necessarily takes place.

The decisions that must be made by government involve painful choices. They affect both the quantity and distribution not only of goods and benefits, but also of potential health and environmental damage. As James DeLong, former research director of the Administrative Conference of the United States, has pointed out:

> It is easy to understand why people would want to avoid making such choices and would rather act in ignorance than with knowledge and responsibility for the consequences of their choices. While this may be understandable, I do not regard it as an acceptable moral position. To govern is to choose, and government officials—whether elected or appointed—betray their obligations to the welfare of the people who hired them if they adopt a policy of happy ignorance and nonresponsibility for consequences.

Benefit-cost analysis is designed not to dictate individual values, but to take them into account when decisions must be made collectively. Its use is grounded on the principle that, in democracy, government must act as an agent of the citizens.

A second challenge regulators may face in using benefit-cost analysis is technical. How are benefits and costs to be assessed? The Committee notes that the field of benefit-cost analysis is more developed than is generally recognized. As discussed above, benefit-cost analysis of all Clean Water rules has been required since 1981 and a federal guidance for conducing benefit-cost analysis, issued with EPA's concurrence, was published over five years ago.

Further, the Committee does not intend that these analyses prolong the decision making process. The level of detail and effort required to complete these analyses should be commensurate with the expected impact of the requirement or guidance. It will come as no surprise if this section will initially be difficult to implement. It will require a change in thinking which will not be easy. However, the Committee expects that the estimation of benefits and costs will eventually become routine and subsequent benefit-cost analyses will greatly benefit from the experience gained under the Executive Orders and the first regulations or guidance assessed under this section.

TITLE IV—PERMITS AND LICENSES

Title IV of the bill amends Title IV of the Act, which addresses permits and licenses.

Section 401. Waste treatment systems for concentrated animal feeding operations

This section amends section 402 of the CWA to clarify the scope of EPA's existing exemption from permitting for certain waste

treatment systems involving concentrated animal feeding operations (CAFOs) and impoundments.

The Committee recognizes that both manmade and naturally existing impoundments are utilized by CAFOs to meet the water quality protection goals and effluent guidelines of the CWA. The Committee recognizes that, in certain parts of the country, a small number of CAFOs utilize playa lakes as waste retention facilities to store rainfall runoff, and process generated wastwater produced by the facility. Historically, these playa lakes have functioned well as waste retention systems due to lack of hydrologic connection to jurisdictional waters of the United States and by providing excess storage and evaporative capacity. It would be counterproductive to classify such structures as waters of the United States, thus restricting their future use. It is the Committee's intent that a concentrated animal feeding operation utilizing a natural topographic impoundment, including a playa lake, on the effective date of this Act is authorized under this Act to continue use of the impoundment.

Section 402. Permit reform

Duration and Reopeners. Section 402(a) of the bill amends section 402(b) of the Act to extend permit terms from 5 to 10 years. The ten year permit term does not preclude the permitting authority from terminating or modifying the permit for cause, including as necessary to address a significant threat to human health and the environment.

Review of Effluent Limitations. Section 402(b) of the bill amends section 301(d) to require that effluent limitations in permits be reviewed at least every ten years, when the permit is reissued.

Discharge Limit. Section 402(c) of the bill amends section 402(b) of the Act to prohibit the permitting authority from setting discharge limits in permits that are below the lowest level that the pollutant can be reliably quantified on an interlaboratory basis for a particular test method, as determined by EPA using approved analytical methods. The requirement that the quantification level be achieved on an interlaboratory basis precludes the permitting authority from setting permit limits below a quantification level that is achieved by only one or two laboratories.

Section 403. Review of State programs and permits

Section 403 of the bill amends section 402 to revise EPA's oversight of decisions made by States regarding implementation of State permitting programs. First, this section amends section 402(a) of the Act to place EPA review of State programs on a three year cycle. Second, this section amends section 402(d) to change the standard for EPA disapproval of State permits from "outside the guidelines and requirements of this Act" to "as presenting a substantial risk to human health and the environment." Third, this section amends section 402(h) to allow EPA to take judicial action to prohibit the introduction of pollutants to a treatment works only where the discharge involves a significant source of pollutants to the waters of the United States.

Section 404. Statistical noncompliance

Section 404 of the bill amends section 402(k) of the Act to provide permittees and indirect dischargers with an affirmative defense to allegations of noncompliance with technology-based effluent limitations or pretreatment standards if the permittee or indirect discharger can show, through reference to information from EPA's rulemaking docket on the development of the relevant effluent guideline, that the technology on which the effluent limitation or pretreatment standard is based does not achieve that limitation or standard 100% of the time.

Technology-based effluent limitations guidelines under the Clean Water Act are supposed to be based upon the pollutant concentration levels that can be achieved by application of the Best Practicable, Best Conventional, and Best Available Technology. In setting these technology-based limits, EPA identifies the model technology that meets the statutory criteria, and then collects data on the pollutant concentration levels that application of such technology is capable of achieving. Not surprisingly, the achievable levels vary from day to day. In deciding what discharger limits to promulgate, EPA analyzes the data from the model technology and, using a statistical methodology, determines the daily maximum pollutant concentration level that the model technology can achieve 99 percent of the time, and the monthly average level that the technology can achieve 95 percent of the time. It does not set the limits at the highest daily maximum or monthly average concentration levels that the model technology achieved because, most of the time, the model achieves lower levels.

Exceedences even 1 percent or 5 percent of the time expose dischargers to significant penalties, even when they are properly using the very technology on which the limits were based. For example, it is not uncommon in some industries for a discharge permit to contain limits on 50 pollutants. In such a case, a discharger using EPA's model technology would be expected to exceed its daily maximum limits 120 times and its monthly average limits 150 times during a 5-year permit term. The maximum potential penalty for this discharger for violations that are expected by EPA's methodology to occur is $115 million.

EPA has argued that it can use its prosecutorial discretion not to bring enforcement actions against dischargers for the occasional exceedances expected from a technology. However, citizen suits are not constrained by prosecutorial discretion. Accordingly, this amendment gives dischargers with occasional permit exceedences a defense to liability if they can demonstrate that their performance is the same as the model technology on which EPA based their permit limits. Nothing in this amendment allows dischargers to reduce their current level of treatment and nothing in this amendment affects water-quality-based effluent limitations.

Section 405. Anti-backsliding requirements

Section 405 of the bill amends section 402(o) of the Act to provide that anti-backsliding restrictions do not apply to a POTW if the POTW demonstrates to EPA that the increase in its discharge is the result of conditions beyond its control and does not impair the water quality of the receiving waters.

Section 406. Intake credits

Section 406 of the bill amends section 402 of the Act to require EPA to take into account the presence of pollutants in a discharger's intake water (i.e., water that is taken into a facility before the facility treats it for any purpose) if the source of the intake water and the receiving water is the same; if the source of the intake water meets drinking water standards; or if the level of a pollutant in the intake water is the same or lower than the level of that pollutant in the receiving water. However, intake credits are not required for a conventional pollutant where the constituents of the conventional pollutant in the intake water are not the same as the constituents of the conventional pollutant in the effluent. This amendment also requires EP to provide an appropriate intake credit in other circumstances, creating a presumption in favor of the use of intake credits. In some cases, the appropriate intake credit may be none at all. However, EPA must explain why intake credits are inappropriate with respect to a particular discharge permit.

This amendment does not preempt States and require them to provide intake credits as well. However, the amendment does ensure that States will retain the flexibility to provide intake credits. In the context of the Great Lakes Initiative, EPA has suggested that it has the authority to preclude States from granting intake credits. This amendment makes it clear that EPA has no such authority.

Section 407. Combined sewer overflows

Section 407 adds new subsection (s) to section 402 of the Act to specifically address combined storm and sanitary sewer system overflows (CSOs). New section 402(s)(1) contains the general requirement that permits for CSOs are consistent with the comprehensive CSO control policy finalized and signed by the Administrator on April 11, 1994. Section 402(s)(2) provides permit terms, including compliance deadlines for long term control plans and extended deadlines based on economic capability and reasonable further progress demonstrations.

Section 402(s)(2)(C) includes additional limitations on extensions. Since it has been demonstrated that some of the untreated wastes discharged during storm events from CSOs located in New York have had negative impacts on the shore areas of New Jersey (resulting in a court-imposed deadline for compliance), the opportunity for extension has been limited. Any extension requested by either New York or New Jersey for a discharge which would affect the other State would have to be agreed to in advance, in writing, by the governors of both States.

New section 402(s)(2)(C)(3) includes a savings clause relating to consent decrees and court orders entered or issued before enactment of H.R. 961. Certain deadlines, schedules or timetables shall be modified to extend to December 31, 2009.

Section 408. Sanitary sewer overflows

Section 408 adds new subsection (t) to section 402 of the Act to specifically address sanitary sewer system overflows (SSOs). New section 402(t)(1) directs the Administrator to develop and publish a national control policy for municipal separate sanitary sewer

overflows. The SSO policy must recognize and address regional and economic factors. The Committee also expects the Administrator to provide a thorough assessment of the problem, including the magnitude, frequency, location, nature, impact, health effects, and existing regulatory controls of SSOs.

Paragraphs (2) and (3) require permits for SSOs to conform to the SSO policy and to include compliance deadlines, including deadlines for long term control plans. Paragraph (4) allows for an extension of such deadlines if certain conditions are met.

Paragraph (5) provides that, prior to publication of the SSO policy, the Administrator or Attorney General may not initiate any administrative or judicial civil penalty action in response to an SSO due to stormwater inflows or infiltration.

Paragraph (6) includes a savings clause similar to the one applicable to CSOs; specifically, certain deadlines, schedules or timetables shall be extended to December 31, 2009.

Section 409. Abandoned mines

This section authorizes EPA to issue permits to governmental entities and persons cooperating with governmental entities that are remediating abandoned mines. The permits modify otherwise applicable Clean Water Act requirements and require the incorporation of a remediation plan. The remediation plan must include, among other things, a description of the physical conditions at the site which are causing adverse water quality impacts and a description of the practices proposed to reduce, control, mitigate or eliminate the adverse conditions, along with a schedule for implementing such practices. The remediation plan must demonstrate, with reasonable certainty, that the actions taken will result in an improvement of water quality.

Abandoned mines continue to pose a problem as a major source of water pollution, as thousands of stream miles are severely impacted by drainage and runoff. These mine sites are of particular concern in the Western States, where sites are numerous and the water supply so precious. However, through remedial actions, water quality previously tainted by mining activities can be improved. The current CWA scheme, however, does not provide the flexibility nor the incentive for undertaking or encouraging such remedial action. The Committee strongly favors remedial measures to improve water quality, and intends through implementation of section 409, to encourage such activities for abandoned mine sites.

Section 410. Beneficial use of biosolids

Subsection 410(a) amends section 405 of the CWA to acknowledge that sewage sludge is also referred to as biosolids. Beneficial recycling of biosolids is an environmentally and scientifically sound practice that can, among other things, improve soil fertility and water conservation. The Committee supports these and other efforts to encourage greater public acceptance of beneficial reuse.

Subsection (b) of the bill directs the Administrator to approve delegation of a State biosolid program if the State includes all the substantive standards for Final Use and Disposal of Sewage Sludge, 40 C.F.R. Part 503, as revised.

EPA's insistence on strict adoption of procedural requirements has delayed delegation. This provision will provide needed flexibility to the States for accepting primacy over the Part 503 program. The biosolids program will operate most effectively when run by the States, and States should be given maximum flexibility to develop their biosolids programs, consistent with the Part 503 regulations. Even though the regulations have been in place for over two years, no State has yet assumed primacy for the program.

Subsection (c) further amends section 405 of the CWA by including a reference to "building materials" (such as "biobricks"), directing the Administrator to issue additional guidance on beneficial use of sewage sludge and updating the funding authorization for the section. The Committee strongly encourages the Administrator to actively promote the development and use of biobricks, one of several promising beneficial uses of sewage sludge. Biobricks, a mixture of sewage sludge, clay and shale, have virtually identical characteristics as other bricks, but added benefits. For example, use of biobricks can help preserve valuable landfill space and conserve energy and water.

Section 411. Waste treatment systems defined

Section 411 of the bill adds new section 406 to the Act to require EPA to issue regulations defining waste treatment systems. Such regulations must include areas used for detention, retention, treatment, settlement, conveyance, or evaporation of wastewater, stormwater, or cooling water within the definition of waste treatment system unless (1) such area was created in a navigable water after the date of enactment, (2) the owner or operator of the area allows it to be used by interstate or foreign travelers for recreational purposes, or (3) the owner or operator of the area allows it to be used for fishing for sale in interstate or foreign commerce.

Under section 502 of the bill, waste treatment systems (as defined by EPA within the parameters of new section 406) are excluded from the definition of navigable waters. This amendment confirms what is already evident from structure and purposes of the Act and from EPA's current applicable regulatory definition of "navigable waters." It should not even be necessary to amend the Act to make it clear that, except in unusual circumstances, areas used for the treatment of wastewaters prior to their discharge to navigable waters are not themselves navigable waters. However, EPA has not consistently applied the regulatory definition of navigable waters, creating uncertainty for the regulated community.

On May 19, 1980, EPA promulgated a definition a "navigable waters" at 40 C.F.R. section 122.2 that excluded "waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds as defined in 40 C.F.R. section 423.11(m) which also meet the criteria of this definition)." In the definition, EPA also provided that: "This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal areas in wetlands) nor resulted from the impoundment of waters of the United States."

The exception in 40 C.F.R. section 122.2 to the general exclusion of waste treatment systems from the definition of navigable waters

was suspended by EPA on July 21, 1980. (45 Fed. Reg. 48620.) At that time, EPA agreed that the definition of navigable waters may be overboard and should be reexamined. In addition, there no longer is a definition of cooling ponds at 40 C.F.R. section 423.11(m), or elsewhere in EPA's regulations.

EPA has not consistently interpreted its regulations to exclude from the definition of navigable waters all waste treatment systems that may have been constructed in jurisdictional waters, or even all waste treatment systems that were clearly constructed outside of jurisdictional waters. In a December 13, 1993, memorandum, Robert Perciasepe, EPA Assistant Administrator for Water reviewed issues relating to whether a new utility cooling pond constructed in part in jurisdictional wetlands would be considered a "navigable water." Mr. Perciasepe concluded that "due to the ambiguities in the existing regulation and apparent lack of national consistency, EPA should begin rulemaking development to air the policy issues and clarify the jurisdictional status of steam electric cooling ponds." EPA has informed the Committee that currently it is not working on the development of such a rulemaking.

In the meantime, under Mr. Perciasepe's memorandum, EPA Regions have the discretion to make decisions regarding whether waste treatment systems are navigable waters on a case-by-case basis. The memorandum specifies that (1) Regions may regulate treatment systems as navigable waters based on an actual or potential connection to interstate commerce (which under some court decisions may include potential use of water by migratory birds), (2) Regions may interpret the current regulatory exclusion for waste treatment systems as including all cooling ponds, whether or not built in jurisdictional waters, or (3) Regions may take into account the particular uses of a cooling pond to decide whether it is a navigable water.

Although built partially in wetlands, Region IV ultimately decided that the cooling pond that was the subject of the 1993 Perciasepe memorandum was not a navigable water. However, a later regulatory official may decide to revisit that decision. In short, companies and individuals today live under a very real fear that cooling ponds and surface impoundments they are using for waste treatment may suddenly be determined to be navigable waters, and subject to the full panoply of Clean Water Act requirements. This is not simply a theoretical concern. There are companies and individuals that are currently under threat of EPA enforcement action in which they are alleged to have discharged without an NPDES permit into settling and evaporation basins that no one previously had ever suggested were navigable waters.

In requiring EPA to clarify the definition of navigable waters as it applies to waste treatment systems, the Committee is making the policy decision that EPA may not revisit an earlier decision to allow the creation of a waste treatment system in a jurisdictional area, such as wetlands, without requiring an NPDES permit for discharges to that waste treatment system. Accordingly, such waste treatment systems are grandfathered. If, however, EPA has asserted jurisdiction over the system and has issued a final NPDES permit for discharges to that system, those areas remain navigable waters.

In developing its regulations, EPA has the discretion to regulate a waste treatment system as a navigable water only if (1) such area was created in a navigable water after the date of enactment, (2) the owner or operator of the area allows it to be used by interstate or foreign travelers for recreational purposes, or (3) the owner or operator of the area allows it to be used for fishing for sale in interstate or foreign commerce. In giving EPA discretion over the jurisdictional status of such areas, the Committee is not requiring that such areas be regulated as navigable waters. In fact, EPA may conclude that such areas are adequately protected under State law or other Federal law; that non-waste treatment uses of the area are sufficiently limited; that classification of an area as a waste treatment system will not pose any significant risk to public health; that facilities open for certain non-treatment uses after the operative date have been or will be closed; that failure to include such areas within the definition of waste treatment system would undermine the achievement of the goals or requirements of the Act; or that Clean Water Act regulation of such areas is not necessary for other policy reasons identified during the rulemaking process. EPA's rules also may allow for case-by-case classification of existing or proposed areas as "waste treatment systems" if such classification is given finality.

Finally, for those areas constructed as waste treatment systems that are nevertheless classified as navigable waters subject to regulation under the Act, the amendment directs EPA and the States to take into account the treatment purposes for which the area was constructed, and allow a permitting authority to tailor any regulatory requirements, including water quality standards, to avoid interfering with continued use of the area for waste treatment. In particular, as to heat, which generally would not be expected to pose any threat to human health, the Committee would expect that thermal standards or other requirements imposed, if any, would not constrain continued use of the area for heat dissipation.

Section 412. Thermal discharges

The intent of section 412 is to require that either the EPA or the State of Ohio determine, based on scientific evidence, that thermal discharges from the Piqua Municipal Utility are actually causing harm to aquatic life, before they require the Utility to construct a cooling tower or operate under a thermal management plan. Additionally, the Committee intends that the Utility not be required to construct the cooling tower of implement the thermal management plan until it has had the opportunity to utilize all rights of appeal and judicial review.

TITLE V—GENERAL PROVISIONS

Section 501. Consultation with States

Section 501 amends the CWA to require, among other things, that EPA consult and substantially involve State and local governments in CWA decisionmaking and implementation efforts. Furthermore, it exempts meetings held between federal officials and State, local, and tribal officials for the purposes of exchanging

views, information, or advice relating to the management or implementation of this Act from the Federal Advisory Committee Act.

The Committee repeatedly received requests, throughout the testimony on CWA reform, to increase the role of State and local governments in the decisionmaking process regarding water issues. Numerous examples were provided demonstrating that water issues could be more effectively addressed at the State and local level, rather than solely at the federal level. Due to the size and rich diversity of our nation's water supply, State and local interests, often times, are in a better position to address water issues unique to their region. The Committee acknowledges this fact, and recognizes the importance of State and local input into the decisionmaking process.

Section 502. Navigable waters defined

Section 502 of the bill amends section 502(7) of the Act to exclude "waste treatment systems," as defined under new section 406, from the definition of navigable waters.

Section 503. CAFO definition clarification

Section 503 amends section 502(14) of the CWA to clarify the definition of a concentrated animal feeding operation (CAFO) as a point source. Unlike typical concentrated production facilities where animals are fed and maintained on a continuous basis for extended periods of time, intermittent nonproducing livestock operations are short-term, temporary facilities. These operations, such as stockyards or holding and sorting facilities, typically house livestock less than 24 hours for one to two days per week, and keep feeding and watering to a minimum.

Section 503 clarifies CAFO to include intermittent nonproducing operations only if the average number of animal units that are fed or maintained in any 90 consecutive day period exceeds the number of animal units determined by EPA or the State to constitute a CAFO; or if the operation is designated by EPA or State as a significant contributor of pollution.

Section 504. Publicly owned treatment works defined

Section 504 of the bill amends section 502 to add a definition for POTWs. To encourage privatization of treatment works, this definition includes all treatment works, other than those located at industrial facilities, that EPA determines are designed and constructed principally to treat domestic sewage or a mixture of domestic sewage and liquid industrial wastes, and, if privately owned, are carrying out and complying with a pretreatment program that meets the requirements of section 307 of the Act.

Section 505. State water quantity rights

Section 505 amends section 510 of the Act to clarify that the Act does not abrogate a State's right to allocate quantities of water or authorize the Federal Government to allocate quantities of water. The provision responds in part to the increasing concern that the Federal Government may try to circumvent the intent of section 101(g) by superseding, abrogating, or otherwise impairing State authorities to allocate water or superseding, abrogating, or otherwise

impairing rights to quantities of water established by State law. The Committee reiterates that the Clean Water Act is a water quality and water pollution control statute and is not to be used by the Federal Government as a means to accomplish other "agendas" such as water quantity allocation.

During its hearing process, the Committee became aware of several potential impacts of the Supreme Court's decision in *PUD No. 1 of Jefferson County* v. *Washington Department of Ecology* (1994). The case is particularly relevant to relationships among Federal and State agencies and to the Federal regulation of U.S. hydroelectric resources. In this case, the Supreme Court ruled, among other things, that State water quality agencies, under section 401 of the Act, could impose stream flow requirements and place other mandatory conditions on hydropower projects to support designated uses.

This decision raises significant policy issues regarding duplication of review in the licensing process for hydropower projects regulated by the Federal Energy Regulatory Commission (FERC). Of primary concern is the consequence that State water quality agencies, under the purview of section 401, might consider and place mandatory conditions on hydropower projects to address issues that are already considered within the Federal licensing process.

Notably, the Supreme Court's decision in *PUD No. 1 of Jefferson County* v. *Washington Department of Ecology* did not address how to resolve potential conflicts between State water quality agency certification requirements and the comprehensive statutory responsibilities of FERC under the Federal Power Act. As a result, hydroelectric licensees are left with some uncertainly and a process that does not necessarily allow for resolution of intergovernmental conflicts or provide the stability and accountability necessary for an effective and workable regulatory program.

While recognizing the need for clarification and regulatory reform, the Committee did not include legislative language on this issue in order to allow adequate time for the hydropower community and state representatives to collaborate on development of a mutually agreeable resolution to the program. Should negotiations in this regard prove unsuccessful, the Committee plans to work with others to resolve the issue legislatively by addressing questions of duplication in the hydropower licensing process, the role of FERC, and proper deference to State water quality agencies.

Section 506. Implementation of water pollution laws with respect to vegetable oil

Section 506 requires federal agencies to differentiate among types of oil when issuing or enforcing regulations or guidelines relating to water pollution control laws. For purposes of this section the phrase "water pollution control laws" is a reference to the CWA and the Oil Pollution Act of 1990. The requirements to apply different standards and reporting requirements (including reporting requirements based on quantitative amounts) is a reference to the so-called "sheen rule" and the need to include a quantitative, volumetric component to such reporting requirements.

Section 507. Needs estimate

Section 507 of the bill amends section 516(b) of the Act to authorize the existing needs estimate to be prepared quadrennially rather than biennially.

Section 508. General program authorizations

Section 508 of the bill amends section 517 of the Act to authorize such sums as may be necessary for fiscal years 1996–2000 to carry out the Act.

Section 509. Indian tribes

Section 509(a) of the bill amends section 518 of the Act to require EPA to respect the terms of cooperative agreements that address the authority of a State or Indian Tribe to administer this Act. The Committee believes that the most appropriate method to ensure consistent implementation of this section between State and Tribal authorities is the development of cooperative agreements. It is the Committee's view that the Administrator should not revise the division of responsibility between a State and a Tribe under this section so long as the cooperative agreement provides for adequate administration of the section.

Section 509(b) amends section 518 to require EPA to issue regulations providing for resolution of disputes arising from differing water quality standards that may be issued by States and Indian Tribes located on common bodies of water. The Committee is of the opinion that there should be a process to resolve disputes between States and Indian Tribes over differing water quality standards located on common water bodies. The Committee also believes that all persons who are impacted by differing water quality standards between the States and Indian Tribes should have standing to utilize the dispute resolution process.

Section 509(c) amends section 518 to give United States District Courts the jurisdiction to review any EPA determinations under Section 518. Because of the cost and burden on States and Indian Tribes associated with challenge to EPA actions, the Committee believes that the proper forum for challenges to actions under this section are the U.S. District Courts that are proximate to the impacted parties. It is also the Committee's view that given the complex legal regimes attendant to States and Indian Tribes under this Section that the District Court should undertake its review de novo including the taking of evidence.

Section 509(d) defines "Federal Indian Reservation" to include, in the State of Oklahoma, lands held in trust by the United States for the benefit of a Tribe, lands subject to federal restrictions against alienation, and lands located within a dependent Indian community. This provision simply conforms the Act to take into account the unique status of certain Indian Tribes within the State of Oklahoma.

Section 509(e) amends section 518(c) to reserve 1 percent of sums appropriated under sections 607 and 608 for Indian Tribes. This provision raised from one-half of 1 percent the amounts to be made available to Indian Tribes. This will allow for additional resources to be authorized for use by Native Americans to alleviate some of the most pressing Clean Water needs.

Section 510. Food processing and food safety

Section 510 of the bill adds section 519 to the Act to require EPA to consult with FDA, the Department of Health and Human Services, the Department of Agriculture, and the Department of Commerce when developing any effluent guideline, pretreatment standard, or new source performance standard applicable to the food processing industry and to consider and explain any departure from any comments from these entities with respect to food safety.

Section 511. Audit dispute resolution

Section 511 of the bill adds new section 520 to the Act to require EPA to establish an independent Board of Audit Appeals to review and decide contested audit determination with respect to grant and contract awards under the Act.

Over the past several years, as the construction grants program has been phased-out, funded projects have undergone rigorous close-out audits to ensure that funds were appropriately expended and that completed projects comply with the grantee's stated plans, designs, and specifications. The Committee has heard testimony over the past several years about disallowance by auditors of previously approved project costs where there is no fraud or abuse.

For example, in the case of the Las Virgenes Municipal Water District in California, an audit disallowed all EPA approved project costs, totalling more than $10 million, because of potential ineligible portions of the sludge disposal facility project. The audit decision was based on the conclusion that the previously approved project design was unacceptable because it resulted in excess disposal capacity. After four years of appeals to EPA, the disallowed costs were reversed. The grantee was awarded all of the costs with the exception of $126,000.

This example is not unique. A survey of audit performed in Region IX between 1985 and 1992 revealed that auditors disallowed approximately 53% of previously approved costs. However, on appeal, 93% of all project costs were upheld. The survey also found that during this time period, EPA spent $12 million to conduct audits, but recovered only $3.5 million based on the final audit resolution.

The current audit and appeals process is not cost-effective and has forced local governments to initiate costly and time consuming appeals that could be handled more efficiently. The Committee also is concerned about the potential conflict of interest created by the fact that, currently, EPA reviews decisions of auditors, even though it is EPA's own project decisions that are the subject of the audit. Accordingly, this amendment directs EPA to establish an independent audit appeals board. This board will provide both local government officials and EPA with an impartial process through which claims can be reviewed and settled, minimizing costs to Federal, State, and local government.

TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

Section 601. General authority for capitalization grants

This section broadens the authorized uses of State revolving loan fund (SRF) assistance to include any activities that accomplish the

purposes of the Clean Water Act. (See conforming provisions in section 603 below.)

Section 602. Capitalization grant agreements

Section 602 removes administrative requirements previously imposed on Title II grant recipients and currently extended to applicants who receive SRF capitalization grant loans. Other cross-cutting federal requirements that may apply to the use of SRF loans (e.g., regulations implementing the Drug-Free Workplace Act of 1988) will be considered met if a State has an applicable program which addresses the intent of the federal requirement. Existing federal requirements would only apply to activities receiving federal capitalization grants. Activities funded by State resources and funds from repaid federal grants would not be covered by federal requirements. This section also requires EPA to issue guidance within one year of enactment on simplified procedures to aid small communities (populations of 20,000 or less) in obtaining assistance under the SRF program. (See section 603 below for other provisions affecting small communities.)

Section 603. Water pollution control revolving loan funds

Section 603 broadens the activities eligible for SRF loans to those actions that have as their principal benefit the protection or improvement of water quality. This includes non-point source programs, watershed management, stormwater management, and measures to improve water use efficiency. Nothing in this section is intended to supersede or otherwise affect other EPA programs under the Safe Drinking Water Act. Nothing in this section authorizes the use of funds for consolidation of small drinking water systems or plumbing replacement. Disadvantaged communities would be eligible for extended repayment schedules of up to 40 years and negative interest rates as low as negative two percent. "Disadvantaged" would be defined by the State based on guidance to be issued by EPA. States may use up to 2 percent of SRF grants for technical assistance to small communities.

Subsection (i) also allows States or relevant agencies to transfer treatment works to a qualified private sector agency. This subsection generally codifies provisions of Executive Order 12803 issued April 30, 1992.

In section 603(c) of the bill, the Committee has expanded the eligible purposes for which State revolving loan funds may be used to include loan guarantees for developing and implementing innovative technologies for purposes of meeting the goals and requirements of the Clean Water Act. This will provide more flexibility to States in assisting private sector projects that may provide substantial water quality benefits.

The Committee is aware that there may be cases in which the recipient of a guarantee will be willing to pay the cost of the guarantee. This type of financing would protect the interests of the State revolving loan fund while enabling the recipient to obtain financing at a reasonable rate. The Committee encourages States to explore this type of financing to promote private sector solutions to water quality problems.

Section 604. Allotment of funds

Section 604 provides for a new allotment formula based on population and recently estimated needs, but adjusts the formula to insert a hold harmless and cap limitation to prevent any State from losing or gaining approximately 10 percent of the State's prior allotment. Without the hold harmless and cap limitation, the allotments to many States would change drastically. For instance, over 14 States would see a reduction of over 50 percent in their allotments (see Figure 2). The 10 percent limitation will ameliorate these potentially disruptive changes.

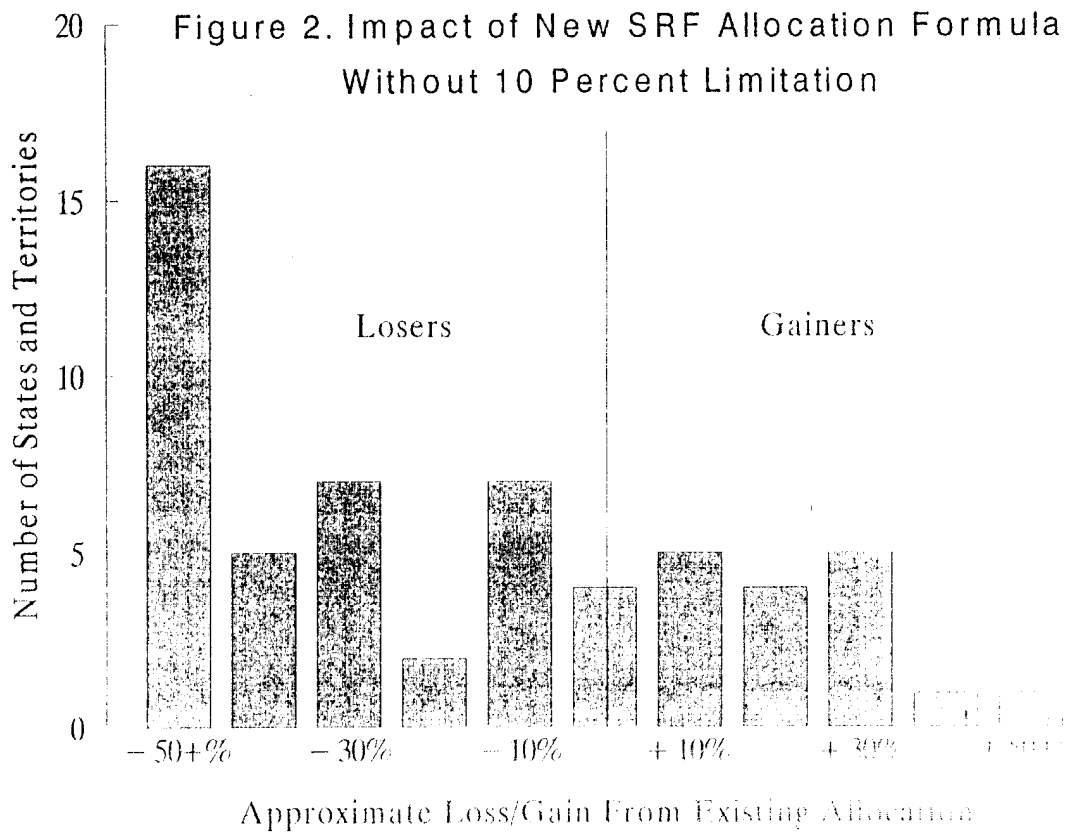


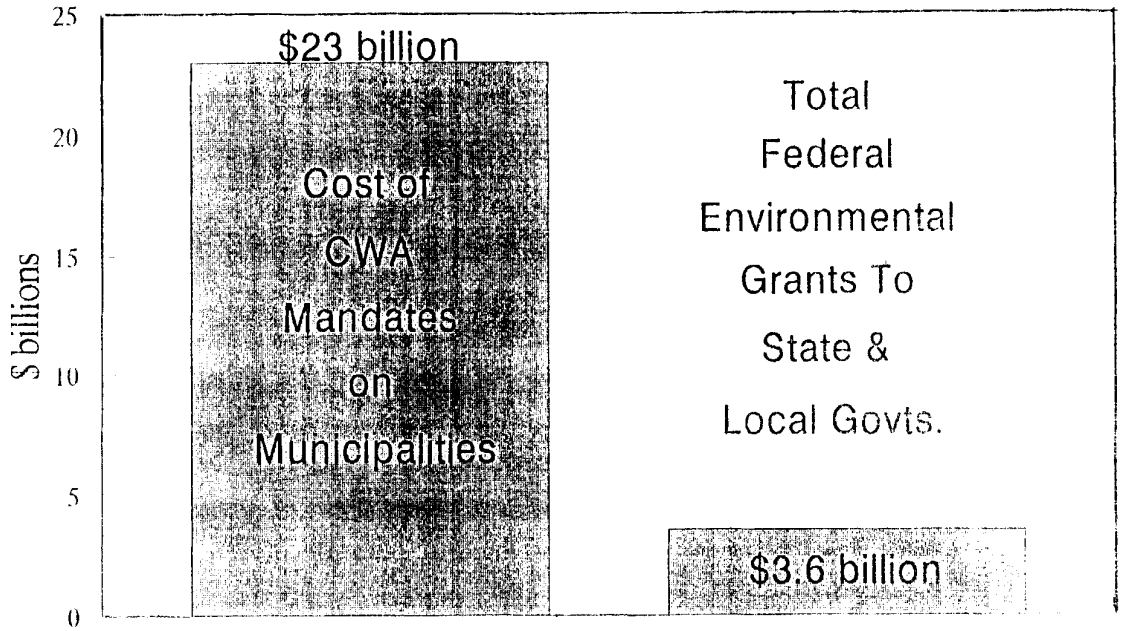
Figure 2. Impact of New SRF Allocation Formula
Without 10 Percent Limitation
Number of States and Territories
20
15
10
5
0
Losers
Gainers
− 50+%
− 30%
− 10%
+ 10%
+ 30%
Approximate Loss/Gain From Existing Allocation

Section 605. Authorization of appropriations

Section 605 authorizes general SRF capitalization grants at $2.5 billion each year for fiscal years 1996 through 2000. It is the Committee's view that authorizing SRF capitalization grants at this level is critical to assisting States and local governments in keeping pace with Clean Water Act needs.

In the near term EPA estimates that current Clean Water Act mandates will cost municipalities approximately $23 billion in fiscal year 1996. This is more than six times the total amount of Federal grants to States and local governments for all environmental needs proposed for 1996 (see Figure 3). In the longer term, EPA estimates that States face over $137 billion in capital needs to meet existing Clean Water Act requirements over the next 20 years.

Figure 3. Clean Water Costs vs. Environmental Grants estimated for FY 1996



Sources: President Clinton's Clean Water Initiative: Analysis of Benefits and Costs
Budget of the U.S. Govt., FY 1996.

On a related issue, the Committee also received testimony critical of the manner in which EPA disburses SRF capitalization grants to States. EPA currently disburses grants through a letter of credit (LOC) procedure whereby the Agency makes commitments to the States through a LOC account established between EPA and the State. Funds are disbursed when States "draw" against the LOC to meet financial obligations. Thus, "draws" are made as costs are incurred to meet construction invoices, premiums for the purchase of bond insurance, and satisfy other fiscal needs.

When it enacted the SRF program, Congress intended for capitalization payments to be made in the form of cash or check. The use of LOCs to disburse funds was not discussed or contemplated. LOCs were developed later by the Executive Branch to defer outlays.

The LOC disbursement method effectively prohibits States from implementing authorized uses of SRF funds which require access to cash in advance of meeting obligations (see section 603(d) of the Act for a list of authorized uses). Unfortunately, the authorized uses of the fund the LOC method obstructs are those uses that offer States very productive capital generation. The Committee is concerned that, in implementing the LOC approach, the Executive Branch has deprived the federal government of maximizing the effectiveness of its investment in water quality improvement.

The Committee believes cash payments would result in a more beneficial and productive use of limited federal funds and calls upon the Administration to work with the appropriate Committees of Congress in studying the advisability and feasibility of moving from the current LOC method for disbursing capitalization grants to cash disbursement as originally intended by Congress.

Section 606. State nonpoint source water pollution control revolving funds

Nonpoint source pollution represents the largest remaining challenge to achieving clean water standards. Recognizing that resource allocations should reflect this changing priority, this section amends Title VI to authorize $500,000,000 per year for a separate State nonpoint source revolving fund dedicated to nonpoint source pollution. Since each State faces a different range of water quality problems and priorities, the Committee has provided for maximum flexibility by allowing each State to transfer funds from one fund to the other.

The Committee expects States to utilize these funds aggressively in providing financial assistance to farmers, ranchers and others involved in nonpoint source activities for the purpose of implementing management measures and for development and implementation of the water quality components of whole farm and ranch plans designed to reduce nonpoint source runoff, with a priority for impaired waters. This dedicated fund also may be used by States to implement the new stormwater management programs that States are required to develop to address stormwater runoff under section 322 of the bill. States are authorized and encourages to utilize the full range of flexibility in utilizing SRF funds, including low- and negative-interest loans to serve as cost-share grants.

TITLE VII—MISCELLANEOUS PROVISIONS

Section 701. Technical amendments

Section 701 provides a number of technical corrections to be made to Title 33 of the U.S. code, including grammatical corrections, typographical errors and misspellings, and inadvertent deletions from original text.

Section 702. John A. Blatnik National Fresh Water Quality Research Laboratory

Section 702 renames the National Fresh Water Laboratory in Duluth, Minnesota for former Chairman of the Committee on Public Works and Transportation, John A. Blatnik. Chairman Blatnik included authorization of the National Fresh Water Laboratory in the 1961 reauthorization of the water pollution control law, as a companion to the National Salt Water Laboratory already established in Rhode Island.

Section 703. Wastewaster service for colonias

Section 703 authorizes $50 million for grants to States along the United States-Mexican border to assist in the planning, design, and construction of wastewater treatment works for communities along the border, known as "Colonias." These grants shall be administered through the EPA. The federal cost of projects undertaken pursuant to these grants shall be limited to 50 percent, with the non-federal share to be provided by the State receiving the grant.

Section 704. Savings in municipal drinking water costs

The Committee believes that municipalities will achieve substantial savings from implementation of CWA reforms, in addition to the environmental benefits expected. Section 704 requires EPA to perform a study of the annual savings that municipalities realize specifically in the construction, operation, and maintenance of drinking water supplies as a result of actions taken pursuant to the CWA; and to report its findings to Congress within one year.

TITLE VIII—WETLANDS CONSERVATION AND MANAGEMENT

Title VIII replaces section 404 of the existing Federal Water Pollution Control Act (FWPCA) with a new, comprehensive program to regulate discharges of dredged or fill material into waters of the United States (including wetlands) and drainage, channelization and excavation activities in wetlands.

Section 801 cites Title VIII as the "Comprehensive Wetlands Conservation and Management Act of 1995."

Section 802 includes findings and statements of purpose. Findings include declarations regarding the importance of wetlands to the Nation; the need for a regulatory approach that balances wetlands conservation and enhancement with consideration of private property rights and the need for essential infrastructure and economic growth; the fact that section 404 was not originally established as a wetlands regulatory program and, under current law, is not effective as such; and the need to streamline regulatory procedures for navigational dredging. Purposes of Title VIII include the assertion by Congress that, for the first time, Federal regu-

latory jurisdiction should be applied to a broad category of activities that cause wetland losses; that Federal agency actions should not limit use of private property or diminish its value; that the relative value of wetlands as measured by the functions they perform should be taken into account in establishing the regulatory requirements applied to activities in wetlands; and that procedures for regulating navigational dredging should be streamlined.

Section 803 is the principal component of Title VIII. It strikes the current section 404 of the FWPCA and replaces it with a new section 404. The following paragraphs summarize the new provisions of section 404:

New section 404(a) specifies that no person may undertake an activity in a wetland or a water of the United States without a permit from the Secretary of the Army ("Secretary") unless otherwise authorized by this section.

New section 404(b) authorizes the Secretary to issue permits in accordance with this section. No Federal permit is required under section 404 for an activity occurring in a Type C wetland, or that is authorized under a general permit, or that is exempt from permit requirements. This provision does not limit State or local government's ability to regulate activities pursuant to their own authorities.

New section 404(c) establishes procedures for the classification of wetlands for purposes of this title and procedures for obtaining wetland classifications. The classification of wetlands according to the relative functions they perform is an essential element of the reforms this title achieves.

Under existing law, there is no meaningful provision for determining the degree of rigor to be applied in regulating proposed activities in wetlands. Today, all federal jurisdictional wetlands are subject to the same degree of regulatory rigor whether the wetland in question is a pristine wooded swamp or a small, degraded wetland in an industrial development. The regulatory agencies suggest that distinctions with respect to various classes of wetlands are reflected in their regulatory decisions, although these distinctions are not reflected in the provisions of the statute. Indeed, the Corps of Engineers and the Environmental Protection Agency issued guidance to their field offices in 1993 on this issue.

The Committee believes strongly that the federal wetlands regulatory program must reflect the reality that all wetlands are not equal. Some wetlands provide greater environmental functions than others and should be treated accordingly. New section 404(c) will remedy this problem in current law by requiring that regulatory emphasis be placed on conserving and enhancing the truly valuable wetland resources while requiring the traditional "public interest" balancing be applied to most wetlands. Regulation of low value wetlands will be left to the discretion of State and local governments. This approach will also allow the limited federal funding and personnel resources available for this program to be concentrated on those wetland resources that are most important to the goals of the FWPCA.

The Secretary is required to issue regulations within one year of enactment on procedures to be used in classifying wetlands. Persons seeking to undertake activities in wetlands regulated under

this section must apply to the Secretary to make a determination on the classification of the affected wetland. Within 90 days of receipt of the application, the Secretary must advise the person of the wetland classification and the basis for such classification. In those cases where the activity would affect a wetland that has already been classified pursuant to the advance classification program under section 404(h), the Secretary must, within 30 days of receipt of the application, provide that information to the person and allow opportunity for a *de novo* classification and an administrative appeal of the classification.

Type A wetlands are defined as those which are of critical significance to the long-term conservation of the aquatic environment and which meet specified requirements. Such requirements include that Type A wetlands (1) serve critical wetlands functions; (2) are at least 10 acres in size (or a part of a wetland that is at least that large) and have either an inlet or an outlet providing for the flow of water into or out of the wetland; (3) occur in a watershed or aquatic environment where there is a scarcity of Type A wetland functions; and (4) are wetlands in which there is unlikely to be an overriding public interest in the use of such wetlands other than conservation.

In issuing regulations on wetland classification, the Secretary is expected to establish clear parameters for applying such terms as "critical significance" and "scarcity." Areas that are wetlands under this section but do not satisfy the requirements for Type A wetlands shall be deemed to be either Type B or Type C wetlands. The Committee has included language that assures that areas such as prairie potholes, vernal pools and playa lakes are not excluded from being classified as Type A wetlands solely because of their limited size or lack of an inlet or outlet for the flow of water; This provision, however, is not intended to prejudge that such areas are Type A wetlands. Depending on the wetland functions they perform and the application of wetland delineation criteria, such areas may be Type B or Type C wetlands or may not qualify as Federal jurisdictional wetlands at all. These determinations must be made on a case-by-case basis.

Type B wetlands are those which provide habitat for significant populations of wetland wildlife or perform other significant wetland functions. Such wetlands will provide enhancement or protection of water quality, significant natural flood control or similar benefits, but in amounts less than that provided by Type A wetlands. As with Type A wetlands, the Secretary shall define "significant" and other key terms in regulations. The Committee anticipates that most wetlands will be determined to be Type B wetlands under this Act.

Type C wetlands are the least valuable wetlands in terms of the functions they perform. They include such areas as those which serve limited wetland functions; which serve some wetland functions but exist in relatively abundant quantity such that Federal regulation is not required to conserve important wetland functions; and areas that are within developed areas that do not serve significant wetlands functions. Wetlands shall not be classified as being Type C merely because they are located in developed areas. The

committee recognizes that many valuable wetlands are located in or adjacent to urban centers or other developed sites.

A landowner may request and obtain a determination of whether a wetland or other water of the United States is present on his or her property and, if wetlands are present, the classification of such wetlands. The Secretary must make determinations and notify the owner within 90 days of such a request and must provide documentation on the basis for making the determination. In the event that the landowner disagrees with the Secretary's determinations, the owner may pursue a judicial review of or an administrative appeal of the determination.

New section 404(d) prescribes the requirements and procedures for remedies to Federal regulatory actions taken under this section that limit the use of property thereby reducing the property's value. These provisions are consistent with those contained in H.R. 925, which was passed by the House of Representatives on March 3, 1995. These provisions require that a property owner who has a portion of his or her property value diminished by 20% or more by an agency action under this section shall be compensated by the Federal Government for that amount. If the affected portion of the property is diminished by more than 50%, the property owner has the right to require the Federal Government to purchase the affected portion of the property for its fair market value. Compensation shall not be made with respect to any agency action taken to prevent a nuisance as defined by State law; an activity prohibited under local zoning ordinance; or a hazard to public health or safety or that is potentially damaging to other property. For example, if a permit is denied for a structure that would otherwise result in flooding to an adjacent property, the permit applicant would not be eligible for compensation under this title.

Once compensation has been made under this title, the affected portion of the property generally cannot be used in a manner that is contrary to the limitation imposed by the regulatory action of the agency. Payment for compensation is to be made from the annual appropriation of the agency causing the reduction in property value. For example, if the Secretary's application of the public interest review for activity in a Type B wetland causes denial of the permit, the Secretary's civil works appropriation will be the source of funds for compensation. Another example would be action taken through the section 404 permit process by the Secretary of the Interior or Secretary of Commerce under the Endangered Species Act that prohibits or limits use of property. In this case funds would come from the appropriation of the Interior or Commerce Department.

New section 404(e) addresses general procedures to be followed in reviewing permit applications. The procedures include application of a "sequential analysis" for activities in Type A wetlands. This sequence requires that, to the maximum extent practicable, impacts on wetlands shall be avoided as the first step in the evaluation of the permit application. Associated with this approach is the presumption that there is a non-wetland alternative location for the activity. An example of where a presumption that there is a non-wetland alternative could be inappropriate is the development of oil and gas or other mineral deposits. If no non-wetland al-

ternative is practicable, the sequence requires that impacts be minimized through such means as project redesign. Any remaining impacts would then be mitigated through the application of compensatory mitigation.

The term "sequential analysis" as used here refers to the process described in the Memorandum of Agreement, dated February 6, 1990, between the Secretary and the Administrator of the Environmental Protection Agency. Application of the sequential analysis procedures shall supplement, but not replace, a review of impacts of the proposed activity on the public interest. For mining activities, mitigation requirements will be deemed to be satisfied where State-approved reclamation plans or permits are in effect if normal reclamation activities are included and if the activity results in net environmental benefits. Permits for activities in Type A wetlands may contain appropriate terms and conditions to prevent unacceptable wetlands losses.

Permit applications for activities in Type B wetlands are evaluated through application of a "public interest" review which balances environmental, economic and social concerns and reaches a conclusion on issuance of a permit based on the weighing of reasonably foreseeable benefits and detriments associated with the proposal. Among the factors to be considered are mitigation costs, overall social, economic and recreational benefits, the ability of the applicant to provide mitigation, the degree of wetlands impact in the context of the total watershed, and whether impacts of the activity are permanent. Unless the Secretary can clearly demonstrate to the contrary, the project purpose as defined by the applicant shall be binding on the Secretary and, in the case of applications from public agencies, the applicant's definition of project purpose shall always be binding on the Secretary.

In evaluating terms and conditions that are necessary to preserve wetland functions, the Secretary shall consider new technologies and methods which have potential for reducing adverse impacts while providing a productive, cost-effective use for recycled resources. One such method incorporates the use of portable road-building mats for temporary, all-weather roads across wetlands, streams and soft ground. The mats, which are made from recycled scrap tires, have been used successfully in the United States and in Canada in the construction, logging, oil and gas, mining and cross-country pipeline industries. The committee encourages the Secretary, where practicable, to use or encourage contractors to use such portable road building mats made from scrap tires and to encourage permit applicants to consider this and other new technologies.

Requirements for compensatory mitigation are addressed in detail in the legislation. These are applicable to activities in Type B and Type A wetlands when the Secretary determines that compensatory mitigation is appropriate in such wetlands. Mitigation shall not be required where the Secretary finds that adverse impacts to wetlands will be temporary or incidental. Mitigation requirements shall be determined based on the specific impact of the proposed activity at the site of such activity, not on the impacts of prior activities or activities occurring at different locations. The Secretary is to issue regulations applicable to mitigation requirements for

permits issued under this section. Among the considerations to be addressed are allowance for mitigation through changes in project design as well as through compensatory actions; mitigation through the enhancement or restoration of degraded wetlands; mitigation through contribution to a mitigation bank; circumstances where off-site mitigation would be appropriate; contributions of in-kind value; construction of coastal wetland protection and enhancement projects; and circumstances where out-of-kind mitigation would be appropriate.

In certain instances, the Secretary may determine that compensatory mitigation is not required. These instances include a finding that: there are limited adverse impacts associated with the permitted activity; practicable and reasonable means of providing mitigation are not available; wetlands functions are provided in the area of the permitted activity in relative abundance such that wetlands functions will continue to occur, taking into account project-specific and cumulative impacts; the adverse wetland impacts are temporary; and hardship factors limit the applicant's ability to provide mitigation.

The use of "mitigation banks" is authorized as an additional means of accomplishing compensatory mitigation for activities under this title. Such banks will provide a greater degree of flexibility to the Secretary and to applicants in finding means of assuring that permitted activities do not result in significant wetlands losses. These procedures are similar to those proposed by the Administration in March 1995. The Secretary is required to issue regulations within 6 months. Such regulations are to address requirements that assure that chemical, physical and biological functions lost through permitted activities are compensated. Emphasis is to be placed on providing for in-kind replacement and proximity to the affected watershed to the extent that this is feasible and makes sense environmentally. This provision is not intended, however, to preclude out-of-kind mitigation where circumstances warrant. Mitigation banks may be operated by a public or private entity as long as such entity has the financial capability to assure the long-term viability of the bank. The means of determining wetland impacts and bank debit amounts are to be based on scientifically sound and consistent methods. Arrangements for mitigation banks are to provide for the transfer of credits for mitigation to be accomplished in the future as well as for mitigation that has already taken place.

Deadlines for making decisions on permit issuance are included to give certainty to applicants and discipline to the regulatory program. Except for circumstances involving compliance with other federal law, such as the National Environmental Policy Act, the Secretary must take final action within 90 days of receipt of a complete permit application for an individual permit; otherwise the permit shall be presumed to be issued in accordance with the proposal's description as contained in the application. If the application's is not complete, the applicant must be notified within 15 days of receipt and must be advised of the additional information that is required. The applicant is also given a role in determining when the permit application is complete. Once the applicant advises the Secretary that the application is complete, the Secretary must either take final action on the application within 90 days or,

if the application does not contain all of the requested information, deny the application, without prejudice, within 30 days. This will provide greater certainty to applicants regarding the status of their application. It will also place greater emphasis on advising the applicant of additional information that is required to evaluate the proposal and will result in more accurate statistics on the regulatory program.

Activities occurring in Type C wetlands are those that do not impact wetland functions sufficiently to warrant the exercise of federal regulatory authority under this title. While such activities may be addressed under State and local regulatory programs, they do not require a federal permit under this title.

States in which there are substantial conserved wetlands warrant regulatory procedures and restrictions that are commensurate to the relative abundance of wetlands within the State. For example, in the State of Alaska there is estimated to be 172,000,000 acres of remaining wetlands, more than the remaining wetlands in the other 49 states combined. An extremely small fraction of the State's historical wetlands base has been lost. Those losses are estimated to be less than 200,000 acres. In cases such as this, permit applicants should have the option of regulatory review procedures that reflect the abundance of wetlands in the State. Procedures in this case will preclude requirements to avoid activities in wetlands. In addition, compensatory mitigation shall not be required and requirements for minimization of impacts shall be contingent on such minimization being economically practicable. Further, where activities occur on economic base lands in a State with substantial conserved wetlands, the Secretary is directed to issue permits that do not require minimization where the interests of economic development so warrant where Alaska Native lands are involved.

Provisions in existing law to authorize the use of "general permits" to streamline and shorten the review time for certain activities are retained and modified to facilitate use of this approach. General permits may apply to activities that are similar in nature and that do not have significant adverse effects when considered singly and cumulatively. For those inquiries that require the Secretary to determine whether the provisions of a general permit apply, the Secretary must make the determination and advise the applicant within 30 days; otherwise the application shall be deemed to be approved. Compensatory mitigation may be required for activities approved under general permits and, as with individually issued permits, mitigation requirements shall be determined based on the specific impact of the proposed activity at the site of such activity, not on the impacts of prior activities or activities occurring at different locations. In States with substantial conserved wetlands, such as the State of Alaska, the Secretary shall issue general permits when requested to do so by a State or local authority; such permits will not contain compensatory mitigation and avoidance requirements, but may contain requirements for minimization of adverse effects.

While certain provisions (such as those relating to wetland classifications and delineations in new subsections 404 (c) and (g) and the sequential analysis addressed in new subsection 404(e)(2)) are applicable to activities in wetlands, this title also applies to activi-

ties in waters of the United States that do not satisfy the criteria used to delineate wetlands, such as streams, rivers, and lakes. The regulation of activities in these areas shall be evaluated using the "public interest" balancing requirements as described for use in evaluating activities occurring in Type B wetlands. The procedural reforms in this title are to apply to activities in non-wetland areas. While this is clarified in most provisions of the bill through use of phrases such as "or waters of the United States," the committee reiterates that procedural reform provisions of this title apply to activities in such areas. These provisions include, but are not necessarily intended to be limited to the following: the Secretary's authority to issue permits and impose conditions to permits (including the requirements for compensatory mitigation), determinations of project purpose, mitigation banking, processing of permit applications and deadlines for final actions, general permits, activities not requiring permits, administrative appeals, procedures applicable to rulemaking, enforcement and violations, assumption of regulatory programs by States, administrative provisions contained in new section 404(m), and definitions.

New section 404(f) replaces existing section 404(f) to modify the categories of activities that do not require permits under this title. A modification is necessary to clarify congressional intent where agency and judicial interpretations have resulted in regulatory expansion beyond the original statute. The list of activities not originally envisioned as being regulated as "discharges of dredged or fill material" has grown to the point that a complete revision of the listing of exempted activities is necessary. While many of these activities merely repeat the exemptions under existing law or are a codification or clarification of existing regulatory exemptions taken through administrative action, several new activities are added to reflect the committee's views on routine, minor work that should not be regulated under this title. Reflecting the above factors, the groups of activities that do not require permits include activities such as: normal agricultural activities whether they be farming, silviculture, aquaculture or ranching; maintenance and emergency reconstruction of facilities for flood control, water supply reservoirs, transportation structures and utility lines; construction and maintenance of farm, stock and aquaculture ponds, wastewater retention features of certain feedlot operations, and irrigation canals and drainage ditches; activities to preserve and enhance aviation safety or to prevent an airport hazard; temporary sedimentation basins for construction projects and dredged material disposal areas in upland areas; and farm, forest, mining and utility access roads and short railroad lines, where such roads and railroad lines include application of best management practices; activities carried out in farmed wetlands where land use changes intended to circumvent regulatory requirements of this section are not involved; and activities that result from a State approved management plan, are consistent with a State or local land management plans approved by the Secretary, are in connection with a State-approved marsh management and conservation program in Louisiana, or are excluded under an approved State coastal zone management program.

Activities undertaken in areas that may technically satisfy wetland delineation criteria, where one or more criteria result from

human alterations or human induced alterations to the area's hydrology, are also exempt unless such areas have exhibited wetlands functions for more than 5 years. For example, areas adjacent to road fills and other engineered works that lack properly designed or maintained drainage facilities such that the creation of wetlands is an incidental result of the work may technically satisfy wetland delineation criteria prescribed in this title. However, since such areas are not intended to result in the creation of wetlands, activities in them shall not be subject to this section unless the areas have performed wetland functions for more than 5 years.

Activities intended to preserve and enhance aviation safety or to prevent an airport hazard are also exempt. This exemption, however, shall not preclude the applicability of the National Environmental Policy Act or other federal laws that may be applicable to projects such as construction of new runways. An example of work to be exempt from regulation under this provision is the clearing of vegetation blocking the control tower's view of the runway approach zone. The provision is intended to address situations such as this, not as a mechanism to bypass existing environmental requirements for construction of new runway projects at airports.

Additional activities that do not require permits under this section include certain federal or State-approved mining activities where any required reclamation is completed within 5 years of commencement of mining activities and activities associated with the placement of piling and related structural members for bridges, utility lines, piers, lighthouses, and houses built on stilts to reduce flooding and similar structures. Activities in States with substantially conserved wetlands, such as the State of Alaska, also do not require permits if they are to provide for critical infrastructure needs, are associated with log transfer facilities, are for certain tailings impoundments, or are for ice pads and roads.

New section 404(g) provides the rules for delineating wetlands for purposes of this title. One of the most controversial and least understood aspects of this regulatory program is the geographic limits of federal regulatory jurisdiction as measured by "wetlands." Scientists and regulatory professionals have debated the limits of federal jurisdiction for decades. While the committee does not presume to address wetlands as that term may relate to non-regulatory Federal programs, State and local regulatory programs, scientific study, academic endeavors and general conservation goals, it does intend to establish a reasonable relationship between water and the limits of federal regulation under this title. The Committee has heard criticisms of its efforts to establish such a relationship and its determination that regulatory jurisdiction be based upon specific criteria and parameters as not being "scientific" and as something that Congress cannot and should not define. The Committee's conclusion is that, while technical experts, regulatory personnel, and special interest groups may debate the use of specific criteria (especially ones with which they do agree), the establishment of geographic limits of federal regulatory jurisdiction is very much a policy matter that is Congress's responsibility to address. In addition to a closer nexus to water, the rules for delineating federal regulatory wetlands must be reasonable, consistent and understandable by the regulated public. The delineation criteria must re-

move the uncertainty that has plagued property owners for years due to changing wetlands delineation criteria and inconsistent application.

The Secretary, in consultation with other federal agencies shall promulgate rules within one year for delineating lands as wetlands for purposes of this title. These rules may not result in an area being determined as "wetland" unless (1) there is clear evidence of three indicators: wetlands hydrology, hydrophytic vegetation and hydric soil being present during the period in which the wetland delineation is made (which shall normally be made during the growing season); (2) vegetation classified as hydrophytic is more adapted to wet soil conditions than to dry soil conditions; (3) some obligate wetlands vegetation is present during the period of delineation (unless it has been removed in order to avoid jurisdiction under this title); (4) water is found to be present at the surface for at least 21 consecutive days during the growing season for a majority of years for which data is available; and (5) the area is not a wetland that is temporarily or incidentally created as a result of adjacent development activity. Rules promulgated by the Secretary shall also provide that current circumstances be used to delineate wetlands, provided that such circumstances have not been altered by activity prohibited under this title. To preclude excessive burdens on county, parish and borough governments having an abundance of wetlands, a cap of 20% is placed on the amount of wetlands in those jurisdictions that can be classified as Type A wetlands. Such wetlands in excess of the cap that would otherwise be classified as Type A shall be classified as Type B wetlands.

Special rules are established for wetland delineations on agricultural lands and associated nonagricultural lands. Wetlands on such lands are to be delineated solely by the Secretary of Agriculture in accordance with the standards established by the Secretary of the Army through rulemaking. The Secretary of Agriculture, acting through the Chief of the Natural Resources Conservation Service, has expertise and capability to conduct these delineations. Authorizing the Secretary of Agriculture to make delineations in agricultural areas and associated nonagricultural areas will end an era of confusion and frustration for agricultural land owners who have been subjected to conflicting wetlands programs under section 404 provisions and provisions of Title XII of the Food Security Act of 1985 ("Swampbuster"). Areas that the Secretary of Agriculture determines to be exempt from the requirements of the Swampbuster program or that the Secretary determines to be exempt as a result of an appeal under Swampbuster shall also be exempt from regulation under this title. Such exemption from the requirements for section 404 permits shall remain in effect as long as such areas are used as agriculture lands.

New section 404(h) requires public notice, including notices for posting near property records for site-specific information, of information relating to wetlands delineation, wetlands classification, and enforcement actions. For wetland delineations and classifications, notice will be made by the Secretary or, in the case of agricultural lands and associated nonagricultural lands, the Secretary of Agriculture. For enforcement actions, notice shall be made by the Secretary and shall be filed with the affected property records.

The Secretary and the Secretary of Agriculture shall undertake a project to develop maps indicating the extent of wetlands in the United States delineated in accordance with the requirements of this title and wetland classifications in accordance with rules promulgated by the Secretary for that purpose. This mapping project is to be complete within 10 years; however, the Secretaries are directed to accomplish this effort in less time if applicable. This mapping project is not intended to result in all cases in maps that are of sufficient detail to be used as the sole source of information for making regulatory decisions under this title; rather, they are intended to provide guidance to property owners, prospective permit applicants, Federal, State and local governments, regulatory personnel and the public and to supplement more detailed case-by-case decisions that may be required. The Committee directs the Secretaries to use existing data and resources to the maximum extent practicable in preparing these wetlands maps. As part of the mapping project, the Secretaries are to make maximum use of public notices and public hearings prior to finalizing the maps and shall assure widespread dissemination of information on completed maps.

New section 404(i) establishes an administrative process for the appeal of regulatory actions by the Secretary, including jurisdictional determinations, wetlands classification, decisions regarding the applicability of exemptions from permit requirements, the applicability of general permits to particular proposals, permit denials, conditions imposed in permits, and certain enforcement orders. Persons filing an appeal must do so within 30 days of the Secretary's action prompting the appeal and a decision on the appeal must be rendered within 90 days after filing. Persons providing written comment on any regulatory action mentioned above that involves a public comment process may participate in the appeal process on any issue raised in their written comment. The decisionaker on matters brought to appeal shall be an impartial federal official who has not participated in the regulatory process leading to the appeal. Until a final decision is made on the appeal, the person filing the appeal shall not be required to pay any penalty or perform any mitigation or restoration that would otherwise be required.

New section 404(j) establishes deadlines and transition rules for the issuance of regulations implementing this title, including those relating to wetland delineation and classification, State and local land management plans that relate to exemptions from permit requirements, individual and general permits, enforcement actions, guidelines applicable to navigational dredging, and other rules that may be necessary. The Secretary must issue interim regulations within 90 days and final regulations within 1 year.

One of the principal reforms of this title is to place management responsibility and accountability to the Congress and the public in the hands of a single agency. Except where otherwise specified, this title shall be administered by the Secretary of the Army, acting through the Chief of Engineers. Due to the unique yet extensive nature of agricultural lands and regulated activity on such lands, the Secretary of Agriculture shall be the sole agency making wetland delineations on agricultural lands and associated non-

agricultural lands. These reforms will bring consistency and predictability to this program and eliminate interagency second-guessing.

New section 404(k) describes procedures for enforcement, including conditions under which actions may be brought against unauthorized activities for civil penalties and criminal fines. Although much of this section is from existing law, several changes have been made. Regarding compliance orders: orders issued by the Secretary must be based on reliable and substantial information and can only be made after reasonable inquiry; persons disputing the Secretary's action may file an appeal and the Secretary must either pursue a civil action or rescind the order within 60 days; and if there is no appeal, the Secretary must take final action within 150 days. For civil penalties, changes include a requirement that the period during which civil monetary penalties accrue commences at the end of the compliance period (up to 30 days after receipt of the compliance order) or, if an appeal is filed, 30 days after denial of such an appeal. The amount of the penalty shall not exceed $25,000 per day for each violation but the exact amount shall be in proportion to the scale or scope of the project. Changes to procedures and requirements for criminal penalties include a requirement that a violation has resulted in actual degradation of the environment and a requirement that action may be brought only by the Attorney General.

New section 404(l) creates a more flexible program for State assumption of the section 404 program or parts of the program. This is consistent with one of the legislation's central themes of encouraging a greater role for State and local governments in the decision making in and the management of water pollution programs affecting the States. The majority of these provisions are from existing law; however, several changes have been incorporated, including greater opportunity to assume the program within geographic subdivisions of the State, and periodic reviews of State performance under delegated programs rather than an ad-hoc approach that creates uncertainty. The committee directs the Secretary to encourage States to assume greater roles in the regulation of activities under this title that occur within State boundaries and to expedite the review and approval of State proposals. In addition, States may seek funds from grants made under section 106 of the FWPCA, as modified by this Act, for purposes of administering delegated section 404 programs.

New section 404(m) contains a number of provisions relating to administration of the program, several of which are from existing law. The provisions (1) emphasize the right of States to control activities in waters within their jurisdiction, including the activities of federal agencies; (2) require permit applications and permits be made available for public information; (3) require publication of all regulations, memoranda of agreement and guidance associated with this program in the Federal Register; (4) deem activities associated with cranberry production to be in compliance with key provisions of existing law, under certain conditions; (5) prohibit any increase in regulatory fees; (6) require the Secretary to balance wetlands conservation with economic growth in implementing this title and to minimize adverse effects on property values; (7) require

the development of a procedures to address regulatory requirements for emergency conditions; (8) clarify that the use of property is limited by an agency action if a legal right to use that property no longer exists because of the action; (9) preclude federal regulatory jurisdiction from being applied in cases where such application would be based solely on the use or potential use by migratory birds; and (10) provide for a transition from the existing regulatory regime to the changes put into effect by this title. Transition provisions include (1) a requirement that all permits issued after the effective date of this title be issued in accordance with this title; (2) a provision that previously issued permits continue in force; (3) an allowance for reconsideration of previously issued permits under the new regulatory procedures, if requested by the permittee, regarding the extent of regulatory jurisdiction or conditions imposed under a permit; and (4) requirements applicable to activities for which permits have been previously denied.

Section 404(m) also contains a number of definitions of terms used in the new section 404. One of the most significant terms is "activity" as used throughout this title, which means the discharge of dredged or fill material into waters of the United States, including wetlands, or the draining, channelization, or excavation of wetlands. By using this term, this would be the first legislation to recognize actions other than the discharge of dredged or fill materials that have potential for the degradation of water quality and wetland functions. Other defined terms are "agency", "agency action", "agricultural land", "conserved wetlands", "economic base lands", "fair market value", "law of a State", "mitigation bank", "navigational dredging", "property", "Secretary", "State with substantial conserved wetlands areas", and "wetlands".

Section 804 includes definitions used in section 502 of the FWPCA, including "wetlands", "creation of wetlands", "enhancement of wetlands", "fastlands", "wetlands functions", "growing season", "incidentally created wetlands", "maintenance", "mitigation banking", "normal farming, silviculture, aquaculture and ranching activities", "prior converted cropland", "restoration", "temporary impacts", and "airport hazard". This section also amends section 502 of existing law by making conforming changes to the existing definition of "pollutant".

Section 805 amends section 309 of existing law to include conforming changes to reflect that wetlands enforcement provisions are to be centrally located in section 404 and implemented by the Secretary.

Section 806 provides that this title and its amendments are effect 90 days after enactment of this Act.

TITLE IX—NAVIGATIONAL DREDGING

Title IX modifies the regulatory provisions of the Marine Protection, Research and Sanctuaries Act to reassign responsibility for administering those provisions from the Administrator of the Environmental Protection Agency to the Secretary of the Army. Consistent with a central theme of Title VIII, the committee believes that the regulation of the transportation and disposal of material in ocean waters should be managed by a single agency and is des-

ignating the Secretary, acting through the Chief of Engineers, as the lead federal agency.

Section 901 states that amendments made by this title are to be considered as changes to the Marine Protection, Research, and Sanctuaries Act of 1972.

Section 902 amends existing section 102 (relating to the transportation and dumping of material, other than dredged material, into ocean waters) by designating the Secretary of the Army as being the principal federal agency implementing the section, rather than the Administrator of the EPA.

Section 903 amends existing section 103 (relating to the transportation and dumping of dredged material into ocean waters) by designating the Secretary of the Army as being the principal federal agency implementing the section, rather than the Administrator of the EPA.

Section 904 amends existing section 104 (relating to conditions on ocean dumping permits) by designating the Secretary of the Army as being the principal federal agency implementing the section, rather than the Administrator of the EPA.

Section 905 amends existing section 104A (relating to dumping of municipal sludge in the New York Bight Apex) by designating the Secretary of the Army as being the principal federal agency implementing the section, rather than the Administrator of the EPA.

Section 906 specifies that references to the Administrator of EPA in any federal law with respect to any function transferred from EPA to the Secretary pursuant to this title shall be deemed as a reference to the Secretary of the Army.

MISCELLANEOUS ISSUES

The Committee does not intend this bill to amend, repeal, supersede or otherwise modify the application of Section 214(g) of the Caribbean Basin Economic Recovery Act (CBERA) (P.L. 98–67, Section 214(g)). It is the intent of the Committee that the exemption contained therein shall remain in full force and effect. The Committee notes that representatives of the U.S. Environmental Protection Agency have reviewed the relevant provisions of this bill and concur in the view that CBERA Section 214(g) is not affected by H.R. 961, as reported.

The Committee recognizes that all indirect dischargers to a POTW must comply with all aspects and requirements of the Clean Water Act, including compliance with applicable pretreatment requirements, whether the indirect discharger that introduces pollutants to the treatment works is a municipality or special district which collects wastewater from individual indirect dischargers or whether the indirect discharger that introduces pollutants to the treatment works is itself an industrial facility.

During the Committee's mark-up of H.R. 961, several amendments addressing the issue of environmental justice were offered, but withdrawn. The Committee did not include specific environmental justice provisions in H.R. 961 because the Committee believes that there is adequate flexibility in the current Act to address environmental justice concerns. The Committee encourages EPA to take into account disadvantaged, low-income, and high-risk

populations when implementing the Act, including in the development of water quality criteria and the collection of data.

HEARINGS AND PREVIOUS LEGISLATIVE ACTIVITY

H.R. 961, the "Clean Water Amendments of 1995," was introduced by Congressman Bud Shuster along with 15 additional bipartisan cosponsors, on February 15, 1995. The bill was referred solely to the Committee on Transportation and Infrastructure. The legislation reflects the theme of devolution in authority over the nation's waters by increasing the role of State and local governments in the decision making process, and emphasizes flexibility and accountability.

During the 103rd Congress the former Committee on Public Works and Transportation's Subcommittee on Water Resources and Environment held 12 hearings on Clean Water Act (CWA) reauthorization issues including: (1) funding and infrastructure; (2) point source regulation; (3) nonpoint source regulation; and (4) wetlands. H.R. 961 originated in the 103rd Congress last spring as the "Bipartisan Alternative." The Bipartisan Alternative was produced in response to a bill drafted by then-Chairman Norm Mineta and Congressman Sherwood Boehlert (H.R. 3948).

A bipartisan coalition of Committee members had strong objections to H.R. 3948, based largely on its command-and-control nature and the top-down decision power given to the Federal EPA. The coalition used the base structure of H.R. 3948 to craft the Bipartisan Alternative, but broadened its appeal by including additional input from State and local governments, industry, agriculture, and other affected stakeholders. The coalition's bill provided greater flexibility to State and local governments and fewer regulatory provisions, while it retained H.R. 3948's provisions on infrastructure and program funding. Ultimately, however, neither bill was considered or ever reported out of Subcommittee.

In the 104th Congress, the newly named Committee on Transportation and Infrastructure included CWA reform as a priority on its agenda. Chairman Shuster directed Committee staff to continue the outreach efforts begun with the Bipartisan Alternative, to solicit views on how best to address the problems of the CWA while continuing its successes in a manner reflective of current conditions, and to develop a comprehensive "Bipartisan Initiative" to be considered by the Committee within the first 100 days of the new Congress.

Prior to any Subcommittee action, the Full Committee held a January 31, 1995, oversight hearing on State perspectives on, among other things, unfunded mandates, regulatory reform, block grants and privatization issues relating to transportation and infrastructure programs. The National Governors Association (NGA) and other State organizations and officials praised the overall intent and effect of the CWA, but called for numerous reforms to reflect current needs. In particular, Governor Nelson of Nebraska, testifying on behalf of NGA, called for improved approaches to nonpoint pollution and stormwater; increased flexibility and cost effectiveness; and a renewed federal commitment to the SRF. Other themes included realistic time frames, performance-based standards, and risk-based approaches to water quality.

The Subcommittee on Water Resources and the Environment, next, divided CWA issues into five major areas—wetlands, nonpoint sources, funding, point sources, and stormwater—and held seven additional hearings, seeking views and input from all interested parties and officials.

The first Subcommittee hearing, held February 9, 1995, focused on State and local perspectives. The witness list included representatives from the National Conference of Mayors, National League of cities, National Governors Association, Association of State and Interstate Water Pollution Control Administrators and various State water agencies. The witnesses provided testimony on the importance of continued funding of the State Revolving Fund, the necessity of incorporating cost-effective criteria into the regulation adoption process, the need for flexibility at the local level to design water treatment programs that will most effectively serve to address the water quality issues for a locale, and the financial burdens imposed on communities by current CWA unfunded mandates.

The second hearing, held February 16, 1995, provided a forum for perspectives on business and economic development. The witness list included representatives of various industries including manufacturing, forestry, transportation, construction, textiles and realty. In addition to expressing views similar to those voiced in the first hearing on SRF funding and permitting programs, these panelists emphasized the following: cost effective risk reduction as the driving principle behind development of water quality requirements; the application of sound, state-of-the-art scientific information for establishing water quality standards; and flexibility to encourage industries to adopt pollution prevention methods which contribute significant environmental benefits, through innovative technology variances and reductions in multi-media discharges.

The third hearing, held February 21, 1995, was reserved for presentation of the Administration's views. The witness panel included representatives from the U.S. Environmental Protection Agency (EPA), the U.S. Department of Agriculture (USDA) and the National Oceanic and Atmospheric Administration (NOAA). The EPA testimony expressed the Administration's recognition of the importance of continued SFR funding; the need to increase the role of State and local authorities in the process of addressing water quality issues, particularly in the area of watershed management; and emphasized common sense approaches to address water quality issues by combining flexible cost-effective methods with realistic expectations. USDA addressed nonpoint source pollution issues. The agency highlighted the successes of their current land management programs, and provided suggestions for improving watershed management programs by increased local participation, program flexibility and increased coordination between Federal and State agencies. The NOAA discussed the Coastal Zone Management Act, specifically the Coastal Zone Reauthorization Amendments of 1990, in relation to controlling nonpoint source pollution.

The panels for the fourth hearing, held February 24, 1995, represented various agricultural interests, environmental groups, and both public and private utilities. The agriculture panelists addressed issues concerning policies regulating both point and

nonpoint sources of pollution and wetlands, emphasizing, again, themes of local control; cost-effective practices; continued funding; and sound, scientific information to be used in setting standards. As to nonpoint source pollution prevention policies in the area of agriculture, specifically, the panelists agreed that the voluntary, incentive-based methods provided under the current CWA scheme were the most effective means to achieve increased water quality. Environmental groups presented their positions on, among other things, wet weather flows; toxic discharges; and pollution prevention aspects, contending that CWA reform required strengthened programs to address remaining water quality problems. They acknowledged that increased flexibility, such as pollutant trading, could be an effective tool in achieving improved water quality at lower cost. The utilities, while expressing specific concern over State water quality certification and federal facility compliance in the hydropower licensing process, emphasized the need for the CWA to ensure reasonable, balanced, non-duplicative, cost-effective and environmentally sound approaches to regulation of remaining sources of pollution.

The fifth hearing, held March 7, 1995, involved six panels of witnesses providing testimony specifically on reform of the Section 404 wetlands permitting program, and property rights. As an overview, the hearings primarily revolved around reform of the individual permitting program, as opposed to the general permitting program. The query which dominated the hearing was whether Congress had intended to include wetlands regulation in the description of "navigable waters" in the original CWA, and if so, whether Congress envisioned the current wetlands regulatory scheme. Repeatedly, witnesses requested Congress to clarify its position concerning the definition of wetlands, the protection of property rights, and the fairness of current permit procedures.

Witnesses of the six panels included private citizens and representives of agriculture; industry; Federal, State and local government; and environmental groups. Testimony from the hearings identified several areas of the current program which cause the greatest problems to the regulated community, and additionally, provided helpful suggestions to correct these problems. Specifically, and repeatedly cited, were the following concerns: the need for a definition of a wetlands, and a system of classification where variances in wetlands value are considered; streamlining of the wetlands permitting process to reduce the time and costs involved, in addition to eliminating multi-agency authority over wetlands regulation; recognition that the State should play a greater role in wetlands regulation due to the unique regional nature of the issues; the importance of funding for education and research on wetlands preservation, to provide incentives to voluntarily adopt wetlands protective measures, and to promote restoration and creation of wetlands, and finally, the dilemma concerning regulatory "takings" of private property and compensation. These concerns were identified by all panel participants at the hearings in some form; however, views differed as how best to resolve the issues.

The sixth hearing, held March 9, 1995, provided a forum for members of Congress to express their views on a variety of regional, local and miscellaneous CWA issues. Representatives from

federal and local government agencies, industry and environmental groups also participated by discussing clean water issues related to specific regions. The panel of Congressional members highlighted the flaws in the current regulatory scheme and discussed clean water proposals of interest to their districts. The regional panels provided testimony on clean water issues concerning, among other things, harbors and estuaries, the Great Lakes region, and the western arid States.

The seventh, and final hearing, was held in Utica, New York, March 11, 1995. The testimony of the three panels, comprised of representatives from local government, industry, agriculture and environmental groups, addressed issues concerning the control of nonpoint source water pollution. Representatives of government, industry and agriculture advocated a more localized approach to nonpoint source pollution, emphasizing the need for flexible, voluntary State/regional programs, and federal financial and technical assistance. Environmental representatives advocated strengthening the nonpoint source program to better control pollution from nonpoint runoff.

In sum, H.R. 961's history dates back to the 103rd Congress and the development of H.R. 3948 and the Bipartisan Alternative. The deliberative process of the 104th Congress continued the extensive efforts made to provide a forum for development of H.R. 961 and for all interested parties to express their views and ensure a role in the legislative process. Although H.R. 961 could not accommodate every single view and suggestion offered, the bill does reflect the prevailing themes repeatedly expressed throughout the information gathering process.

COMMITTEE CONSIDERATION

Clause 2(l)(2)(B) of rule XI requires each committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against.

MENENDEZ SUBSTITUTE TO FRANKS (17–39)

This amendment relates to the permiting process for the discharge of dredged material from navigational dredging. Discharges subject to permitting under this section do not have to obtain section 404 permits.

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	N
Mr. Bachus	N	Ms. Johnson	Y
Mr. Baker	N	Mrs. Kelly	N
Mr. Barcia	.....	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N
Mr. Boehlert	N	Mr. LaTourette	N
Mr. Borski	Y	Mr. Laughlin	N
Mr. Brewster	N	Mr. Lipinski	Y
Ms. Brown	Y	Mr. Martini	N
Mr. Clement	Y	Mr. Menendez	Y
Mr. Clinger	.....	Mr. Mica	N
Mr. Clyburn	.....	Mr. Mineta	Y

Member	Voted	Member	Voted
Mr. Coble	N	Ms. Molinari	N
Ms. Collins	Y	Mr. Nadler	N
Mr. Costello	Y	Ms. Norton	Y
Mr. Cramer	.....	Mr. Oberstar	Y
Ms. Danner	N	Mr. Parker	N
Mr. Deal	N	Mr. Petri	N
Mr. DeFazio	Y	Mr. Poshard	Y
Mr. Duncan	.....	Mr. Quinn	N
Mr. Ehlers	N	Mr. Rahall	Y
Mr. Emerson	N	Mrs. Seastrand	N
Mr. Ewing	N	Mr. Tate	N
Mr. Filner	Y	Mr. Traficant	N
Mrs. Fowler	N	Mr. Tucker	Y
Mr. Franks	N	Mr. Wamp	N
Mr. Gilchrest	N	Mr. Weller	N
Mr. Hayes	N	Mr. Wise	Y
Mr. Horn	N	Mr. Young	N
		Mr. Zeliff	N

FRANKS AMENDMENT NAVIGATIONAL DREDGING (56—4)

This amendment establishes a permitting process for navigational dredging and would reduce EPA's role in the permitting process.

Member	Voted	Member	Voted
Mr. Shuster	Y	Mr. Hutchinson	Y
Mr. Bachus	Y	Ms. Johnson	Y
Mr. Baker	Y	Mrs. Kelly	Y
Mr. Barcia	Y	Mr. Kim	Y
Mr. Bateman	Y	Mr. LaHood	Y
Mr. Blute	Y	Mr. Latham	Y
Mr. Boehlert	Y	Mr. Latourette	Y
Mr. Borski	Y	Mr. Laughlin	Y
Mr. Brewster	Y	Mr. Lipinski	Y
Ms. Brown	Y	Mr. Martini	Y
Mr. Clement	Y	Mr. Menendez	Y
Mr. Clinger	Y	Mr. Mica	Y
Mr. Clyburn	N	Mr. Mineta	N
Mr. Coble	Y	Ms. Molinari	Y
Ms. Collins	Y	Mr. Nadler	N
Mr. Costello	Y	Ms. Norton	Y
Mr. Cramer	.....	Mr. Oberstar	N
Ms. Danner	Y	Mr. Parker	Y
Mr. Deal	Y	Mr. Petri	Y
Mr. DeFazio	Y	Mr. Poshard	Y
Mr. Duncan	Y	Mr. Quinn	Y
Mr. Ehlers	Y	Mr. Rahall	Y
Mr. Emerson	Y	Mrs. Seastrand	Y
Mr. Ewing	Y	Mr. Tate	Y
Mr. Filner	Y	Mr. Traficant	Y
Mrs. Fowler	Y	Mr. Tucker	Y
Mr. Franks	Y	Mr. Wamp	Y
Mr. Gilchrest	Y	Mr. Weller	Y
Mr. Hayes	Y	Mr. Wise	Y
Mr. Horn	Y	Mr. Young	Y
		Mr. Zeliff	Y

MINETA WAIVERS RISK ASSESSMENT (18—38)

This amendment would require EPA conduct risk assessments before issuing or granting any site-specific permit modifications or waivers.

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	N
Mr. Bachus	N	Ms. Johnson	.....
Mr. Baker	N	Mrs. Kelly	N
Mr. Barcia	Y	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N
Mr. Boehlert	N	Mr. LaTourette	N
Mr. Borski	Y	Mr. Laughlin	N
Mr. Brewster	N	Mr. Lipinski	Y
Ms. Brown	Y	Mr. Martini	.....
Mr. Clement	Y	Mr. Menendez	Y
Mr. Clinger	N	Mr. Mica	N
Mr. Clyburn	Y	Mr. Mineta	Y
Mr. Coble	N	Mr. Molinari	N
Ms. Collins	Y	Mr. Nadler	Y
Mr. Costello	N	Ms. Norton	Y
Mr. Cramer	.....	Mr. Oberstar	Y
Ms. Danner	N	Mr. Parker	N
Mr. Deal	Y	Mr. Petri	.....
Mr. DeFazio	Y	Mr. Poshard	N
Mr. Duncan	.....	Mr. Quinn	N
Mr. Ehlers	N	Mr. Rahall	Y
Mr. Emerson	N	Mrs. Seastrand	N
Mr. Ewing	N	Mr. Tate	N
Mr. Filner	Y	Mr. Traficant	N
Mrs. Fowler	N	Mr. Tucker	Y
Mr. Franks	N	Mr. Wamp	N
Mr. Gilchrest	N	Mr. Weller	N
Mr. Hayes	N	Mr. Wise	Y
Mr. Horn	N	Mr. Young	N
		Mr. Zeliff	N

BOEHLERT SRF AMENDMENT NO. 6 (23–35)

This amendment would establish a separate $500 million/year state revolving fund to provide loans to farmers, loggers, and others implementing measures to control nonpoint source pollution.

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	N
Mr. Bachus	N	Ms. Johnson	Y
Mr. Baker	N	Mrs. Kelly	N
Mr. Barcia	Y	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N
Mr. Boehlert	Y	Mr. LaTourette	N
Mr. Borski	Y	Mr. Laughlin	N
Mr. Brewster	N	Mr. Lipinski	Y
Ms. Brown	.....	Mr. Martini	N
Mr. Clement	Y	Mr. Menendez	Y
Mr. Clinger	N	Mr. Mica	N
Mr. Clyburn	Y	Mr. Mineta	Y
Mr. Coble	N	Ms. Molinari	Y
Mr. Collins	Y	Mr. Nadler	Y
Mr. Costello	Y	Ms. Norton	Y
Mr. Cramer	.....	Mr. Oberstar	Y
Ms. Danner	N	Mr. Parker	N
Mr. Deal	N	Mr. Petri	N
Mr. DeFazio	Y	Mr. Poshard	Y
Mr. Duncan	N	Mr. Quinn	N
Mr. Ehlers	Y	Mr. Rahall	Y
Mr. Emerson	N	Mrs. Seastrand	N
Mr. Ewing	N	Mr. Tate	N
Mr. Filner	.....	Mr. Traficant	N

Member	Voted	Member	Voted
Mrs. Fowler	N	Mr. Tucker	Y
Mr. Franks	N	Mr. Wamp	N
Mr. Gilchrest	Y	Mr. Weller	N
Mr. Hayes	N	Mr. Wise	Y
Mr. Horn	Y	Mr. Young	N
		Mr. Zeliff	N

EHLERS GREAT LAKES INITIATIVE (27—24)

This amendment would strike language clarifying that the Great Lakes Initiative in section 118 of the Clean Water Act is merely guidance.

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	N
Mr. Bachus	Y	Ms. Johnson	.....
Mr. Baker	N	Mrs. Kelly	N
Mr. Barcia	Y	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N
Mr. Boehlert	Y	Mr. LaTourette	Y
Mr. Borski	.....	Mr. Laughlin	Y
Mr. Brewster	Y	Mr. Lipinski	Y
Ms. Brown	Y	Mr. Martini	Y
Mr. Clement	N	Mr. Menendez	Y
Mr. Clinger	.....	Mr. Mica	N
Mr. Clyburn	Y	Mr. Mineta	Y
Mr. Coble	N	Ms. Molinari	N
Ms. Collins	Y	Mr. Nadler	Y
Mr. Costello	Y	Ms. Norton	Y
Mr. Cramer	Y	Mr. Oberstar	Y
Ms. Danner	N	Mr. Parker	N
Mr. Deal	Y	Mr. Petri	N
Mr. DeFazio	Y	Mr. Poshard	Y
Mr. Duncan	.....	Mr. Quinn	N
Mr. Ehlers	Y	Mr. Rahall	Y
Mr. Emerson	.....	Mrs. Seastrand	N
Mr. Ewing	N	Mr. Tate	N
Mr. Filner	Y	Mr. Traficant	.....
Mrs. Fowler	N	Mr. Tucker	Y
Mr. Franks	Y	Mr. Wamp	N
Mr. Gilchrest	Y	Mr. Weller	N
Mr. Hayes	PASS	Mr. Wise	.....
Mr. Horn	.....	Mr. Young	N
		Mr. Zeliff	.....

LIPINSKI ALLOCATION FORMULA (30—30)

This amendment sought to reinstate the allotment formula that was in H.R. 961 as introduced.

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	N
Mr. Bachus	N	Ms. Johnson	Y
Mr. Baker	Y	Mrs. Kelly	Y
Mr. Barcia	N	Mr. Kim	Y
Mr. Bateman	N	Mr. LaHood	Y
Mr. Blute	N	Mr. Latham	N
Mr. Boehlert	N	Mr. LaTourette	N
Mr. Borski	Y	Mr. Laughlin	N
Mr. Brewster	N	Mr. Lipinski	Y
Ms. Brown	Y	Mr. Martini	Y
Mr. Clement	Y	Mr. Menendez	Y

Member	Voted	Member	Voted
Mr. Clinger	N	Mr. Mica	N
Mr. Clyburn	N	Mr. Mineta	Y
Mr. Coble	Y	Ms. Molinari	Y
Ms. Collins	Y	Mr. Nadler	Y
Mr. Costello	Y	Ms. Norton	N
Mr. Cramer	N	Mr. Oberstar	N
Ms. Danner	N	Mr. Parker	N
Mr. Deal	Y	Mr. Petri	N
Mr. DeFazio	Y	Mr. Poshard	Y
Mr. Duncan	N	Mr. Quinn	Y
Mr. Ehlers	N	Mr. Rahall	.....
Mr. Emerson	N	Mrs. Seastrand	Y
Mr. Ewing	Y	Mr. Tate	Y
Mr. Filner	Y	Mr. Traficant	N
Mrs. Fowler	Y	Mr. Tucker	Y
Mr. Franks	Y	Mr. Wamp	N
Mr. Gilchrest	N	Mr. Weller	Y
Mr. Hayes	N	Mr. Wise	Y
Mr. Horn	N	Mr. Young	N
		Mr. Zeliff	N

MINETA RISKS AND BENEFIT-COST (20–28)

This amendment limits the risks that can be used for comparison, changes the benefit-cost decision criterion, and strikes the retroactive application of the benefit-cost provisions.

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	N
Mr. Bachus	N	Ms. Johnson	Y
Mr. Baker	N	Mrs. Kelly	N
Mr. Barcia	Y	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N
Mr. Boehlert	.....	Mr. LaTourette	.....
Mr. Borski	Y	Mr. Laughlin	.....
Mr. Brewster	.....	Mr. Lipinski	Y
Ms. Brown	Y	Mr. Martini	.....
Mr. Clement	Y	Mr. Menendez	Y
Mr. Clinger	N	Mr. Mica	N
Mr. Clyburn	Y	Mr. Mineta	Y
Mr. Coble	N	Ms. Molinari	N
Ms. Collins	Y	Mr. Nadler	Y
Mr. Costello	Y	Ms. Norton	Y
Mr. Cramer	.....	Mr. Oberstar	Y
Ms. Danner	.....	Mr. Parker	.....
Mr. Deal	.....	Mr. Petri	N
Mr. DeFazio	Y	Mr. Poshard	.....
Mr. Duncan	N	Mr. Quinn	N
Mr. Ehlers	N	Mr. Rahall	Y
Mr. Emerson	N	Mrs. Seastrand	N
Mr. Ewing	.....	Mr. Tate	.....
Mr. Filner	Y	Mr. Traficant	Y
Mrs. Fowler	N	Mr. Tucker	Y
Mr. Franks	.....	Mr. Wamp	N
Mr. Gilchrest	N	Mr. Weller	N
Mr. Hayes	N	Mr. Wise	Y
Mr. Horn	N	Mr. Young	N
		Mr. Zeliff	N

MINETA STORMWATER (23–31)

This amendment modifies the existing section 402(p) stormwater program without repealing it as is done in H.R. 961.

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	N
Mr. Bachus	.....	Ms. Johnson	Y
Mr. Baker	N	Mrs. Kelly	N
Mr. Barcia	N	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N
Mr. Boehlert	Y	Mr. LaTourette	N
Mr. Borski	Y	Mr. Laughlin	N
Mr. Brewster	N	Mr. Lipinski	Y
Ms. Brown	Y	Mr. Martini	.....
Mr. Clement	Y	Mr. Menendez	Y
Mr. Clinger	N	Mr. Mica	.....
Mr. Clyburn	Y	Mr. Mineta	Y
Mr. Coble	N	Ms. Molinari	.....
Ms. Collins	Y	Mr. Nadler	Y
Mr. Costello	Y	Ms. Norton	Y
Mr. Cramer	N	Mr. Oberstar	Y
Ms. Danner	N	Mr. Parker	N
Mr. Deal	Y	Mr. Petri	N
Mr. DeFazio	Y	Mr. Poshard	Y
Mr. Duncan	N	Mr. Quinn	N
Mr. Ehlers	N	Mr. Rahall	Y
Mr. Emerson	.....	Mrs. Seastrand	N
Mr. Ewing	N	Mr. Tate	N
Mr. Filner	Y	Mr. Traficant	Y
Mrs. Fowler	.....	Mr. Tucker	Y
Mr. Franks	.....	Mr. Wamp	N
Mr. Gilchrest	Y	Mr. Weller	N
Mr. Hayes	N	Mr. Wise	Y
Mr. Horn	N	Mr. Young	N
		Mr. Zeliff	N

YOUNG MOTION TO TABLE BARCIA (33–25)

Barcia amendment was to reoffer Lipinski amendment.

Member	Voted	Member	Voted
Mr. Shuster	Y	Mr. Hutchinson	Y
Mr. Bachus	.....	Ms. Johnson	N
Mr. Baker	Y	Mrs. Kelly	N
Mr. Barcia	N	Mr. Kim	N
Mr. Bateman	Y	Mr. LaHood	Y
Mr. Blute	Y	Mr. Latham	Y
Mr. Boehlert	Y	Mr. LaTourette	Y
Mr. Borski	N	Mr. Laughlin	Y
Mr. Brewster	Y	Mr. Lipinski	N
Ms. Brown	N	Mr. Martini	.....
Mr. Clement	N	Mr. Menendez	N
Mr. Clinger	Y	Mr. Mica	.....
Mr. Clyburn	Y	Mr. Mineta	N
Mr. Coble	Y	Ms. Molinari	N
Ms. Collins	N	Mr. Nadler	N
Mr. Costello	N	Ms. Norton	Y
Mr. Cramer	Y	Mr. Oberstar	Y
Ms. Danner	Y	Mr. Parker	Y
Mr. Deal	N	Mr. Petri	Y
Mr. DeFazio	N	Mr. Poshard	N
Mr. Duncan	Y	Mr. Quinn	N
Mr. Ehlers	Y	Mr. Rahall	N
Mr. Emerson	Y	Mrs. Seastrand	N
Mr. Ewing	Y	Mr. Tate	Y
Mr. Filner	N	Mr. Traficant	Y
Mrs. Fowler	N	Mr. Tucker	N
Mr. Franks	N	Mr. Wamp	Y
Mr. Gilchrest	Y	Mr. Weller	Y

Member	Voted	Member	Voted
Mr. Hayes	Y	Mr. Wise	N
Mr. Horn	Y	Mr. Young	Y
		Mr. Zeliff	Y

MINETA TITLE VIII SUBSTITUTE (11—39)

This amendment would strike Title VIII of H.R. 961 and replace it with alternative wetlands protection language.

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	.....
Mr. Bachus	N	Ms. Johnson	.....
Mr. Baker	N	Mrs. Kelly	N
Mr. Barcia	N	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N
Mr. Boehlert	.....	Mr. LaTourette	N
Mr. Borski	Y	Mr. Laughlin	N
Mr. Brewster	N	Mr. Lipinski	.....
Ms. Brown	.....	Mr. Martini	N
Mr. Clement	N	Mr. Menendez	Y
Mr. Clinger	N	Mr. Mica	.....
Mr. Clyburn	Y	Mr. Mineta	Y
Mr. Coble	N	Mr. Molinari	N
Ms. Collins	.....	Mr. Nadler	Y
Mr. Costello	N	Ms. Norton	Y
Mr. Cramer	N	Mr. Oberstar	Y
Ms. Danner	N	Mr. Parker	N
Mr. Deal	.....	Mr. Petri	N
Mr. DeFazio	Y	Mr. Poshard	N
Mr. Duncan	.....	Mr. Quinn	N
Mr. Ehlers	N	Mr. Rahall	Y
Mr. Emerson	N	Mrs. Seastrand	N
Mr. Ewing	.....	Mr. Tate	N
Mr. Filner	Y	Mr. Traficant	N
Mrs. Fowler	N	Mr. Tucker	N
Mr. Franks	.....	Mr. Wamp	N
Mr. Gilchrest	Y	Mr. Weller	N
Mr. Hayes	N	Mr. Wise	N
Mr. Horn	N	Mr. Young	N
		Mr. Zeliff	N

GILCHRIST NAS STUDY (17—38)

This amendment would strike Title VIII of H.R. 961 and limit further action on revisions to Section 404 of the Clean Water Act until after the National Academy of Sciences publishes results of its study on wetlands.

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	.....
Mr. Bachus	N	Ms. Johnson	N
Mr. Baker	.....	Mrs. Kelly	N
Mr. Barcia	N	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N
Mr. Boehlert	Y	Mr. LaTourette	N
Mr. Borski	Y	Mr. Laughlin	N
Mr. Brewster	N	Mr. Lipinski	N
Ms. Brown	Y	Mr. Martini	N
Mr. Clement	N	Mr. Menendez	Y
Mr. Clinger	N	Mr. Mica	N

Member	Voted	Member	Voted
Mr. Clyburn	Y	Mr. Mineta	Y
Mr. Coble	N	Ms. Molinari	.....
Ms. Collins	.....	Mr. Nadler	Y
Mr. Costello	N	Ms. Norton	Y
Mr. Cramer	N	Mr. Oberstar	Y
Ms. Danner	N	Mr. Parker	N
Mr. Deal	N	Mr. Petri	N
Mr. DeFazio	Y	Mr. Poshard	N
Mr. Duncan	N	Mr. Quinn	N
Mr. Ehlers	Y	Mr. Rahall	Y
Mr. Emerson	N	Mrs. Seastrand	N
Mr. Ewing	.....	Mr. Tate	N
Mr. Filner	Y	Mr. Traficant	N
Mrs. Fowler	N	Mr. Tucker	Y
Mr. Franks	.....	Mr. Wamp	N
Mr. Gilchrest	Y	Mr. Weller	N
Mr. Hayes	N	Mr. Wise	Y
Mr. Horn	Y	Mr. Young	N
		Mr. Zeliff	N

BORSKI TITLE VIII SUBSTITUTE (13—36)

This amendment would strike Title VIII of H.R. 961 and replace it with a wetlands permitting proposal prepared by certain state officials and omitting any provisions on the definition of takings.

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	.....
Mr. Bachus	N	Ms. Johnson	N
Mr. Baker	.....	Mrs. Kelly	N
Mr. Barcia	N	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N
Mr. Boehlert	.....	Mr. LaTourette	.....
Mr. Borski	Y	Mr. Laughlin	N
Mr. Brewster	N	Mr. Lipinski	N
Ms. Brown	N	Mr. Martini	N
Mr. Clement	.....	Mr. Menendez	Y
Mr. Clinger	.....	Mr. Mica	N
Mr. Clyburn	Y	Mr. Mineta	Y
Mr. Coble	N	Ms. Molinari	.....
Ms. Collins	.....	Mr. Nadler	Y
Mr. Costello	N	Ms. Norton	Y
Mr. Cramer	N	Mr. Oberstar	Y
Ms. Danner	N	Mr. Parker	N
Mr. Deal	N	Mr. Petri	N
Mr. DeFazio	Y	Mr. Poshard	N
Mr. Duncan	.....	Mr. Quinn	N
Mr. Ehlers	N	Mr. Rahall	Y
Mr. Emerson	N	Mrs. Seastrand	N
Mr. Ewing	.....	Mr. Tate	N
Mr. Filner	Y	Mr. Traficant	N
Mrs. Fowler	N	Mr. Tucker	Y
Mr. Franks	.....	Mr. Wamp	N
Mr. Gilchrest	Y	Mr. Weller	N
Mr. Hayes	N	Mr. Wise	Y
Mr. Horn	N	Mr. Young	N
		Mr. Zeliff	.....

PETRI GREAT LAKES INITIATIVE AMENDMENT (34—18)

This amendment provides that State water quality standards and policies must be consistent with guidance in the Great Lakes

Initiative and provide a level of protection that is comparable to that guidance.

Member	Voted	Member	Voted
Mr. Shuster	Y	Mr. Hutchinson	.....
Mr. Bachus	N	Ms. Johnson	N
Mr. Baker	Y	Mrs. Kelly	Y
Mr. Barcia	N	Mr. Kim	Y
Mr. Bateman	Present	Mr. LaHood	Y
Mr. Blute	Y	Mr. Latham	Y
Mr. Boehlert	N	Mr. LaTourette	N
Mr. Borski	N	Mr. Laughlin	Y
Mr. Brewster	.....	Mr. Lipinski	Y
Ms. Brown	N	Mr. Martini	Y
Mr. Clement	.....	Mr. Menendez	N
Mr. Clinger	Y	Mr. Mica	Y
Mr. Clyburn	N	Mr. Mineta	N
Mr. Coble	Y	Ms. Molinari	Y
Ms. Collins	.....	Mr. Nadler	N
Mr. Costello	Y	Ms. Norton	N
Mr. Cramer	Y	Mr. Oberstar	N
Ms. Danner	Y	Mr. Parker	Y
Mr. Deal	Y	Mr. Petri	Y
Mr. DeFazio	N	Mr. Poshard	Y
Mr. Duncan	Y	Mr. Quinn	Y
Mr. Ehlers	N	Mr. Rahall	N
Mr. Emerson	Y	Mrs. Seastrand	Y
Mr. Ewing	.....	Mr. Tate	Y
Mr. Filner	N	Mr. Traficant	.....
Mrs. Fowler	Y	Mr. Tucker	.....
Mr. Franks	Y	Mr. Wamp	Y
Mr. Gilchrest	N	Mr. Weller	Y
Mr. Hayes	Y	Mr. Wise	.....
Mr. Horn	Y	Mr. Young	Y
		Mr. Zeliff	Y

NADLER NO CHLORINE (5—42)

This amendment would have called on the pulp and paper industry to discontinue the use of chlorine in the making of paper products.

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	.....
Mr. Bachus	N	Ms. Johnson	N
Mr. Baker	N	Mrs. Kelly	N
Mr. Barcia	.....	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N
Mr. Boehlert	N	Mr. LaTourette	N
Mr. Borski	.....	Mr. Laughlin	N
Mr. Brewster	.....	Mr. Lipinski	Y
Ms. Brown	.....	Mr. Martini	N
Mr. Clement	N	Mr. Menendez	N
Mr. Clinger	N	Mr. Mica	.....
Mr. Clyburn	N	Mr. Mineta	N
Mr. Coble	N	Ms. Molinari	N
Ms. Collins	.....	Mr. Nadler	Y
Mr. Costello	N	Ms. Norton	Y
Mr. Cramer	N	Mr. Oberstar	N
Ms. Danner	N	Mr. Parker	N
Mr. Deal	N	Mr. Petri	N
Mr. DeFazio	N	Mr. Poshard	N
Mr. Duncan	.....	Mr. Quinn	N
Mr. Ehlers	N	Mr. Rahall	N

Member	Voted	Member	Voted
Mr. Emerson	.....	Mrs. Seastrand	N
Mr. Ewing	.....	Mr. Tate	N
Mr. Filner	Y	Mr. Traficant	.....
Mrs. Fowler	.....	Mr. Tucker	.....
Mr. Franks	N	Mr. Wamp	N
Mr. Gilchrest	Y	Mr. Weller	N
Mr. Hayes	N	Mr. Wise	.....
Mr. Horn	N	Mr. Young	N
		Mr. Zeliff	N

EMERSON COOLING PONDS (44—10)

This amendment limits the need for new section 402 or 404 permits when a discharge is into an area used for detention, retention, treatment, settling, conveyance or cooling.

Member	Voted	Member	Voted
Mr. Shuster	Y	Mr. Hutchinson	Y
Mr. Bachus	Y	Ms. Johnson	N
Mr. Baker	Y	Mrs. Kelly	Y
Mr. Barcia	Y	Mr. Kim	Y
Mr. Bateman	Y	Mr. LaHood	Y
Mr. Blute	Y	Mr. Latham	Y
Mr. Boehlert	Y	Mr. LaTourette	Y
Mr. Borski	N	Mr. Laughlin	.....
Mr. Brewster	.....	Mr. Lipinski	Y
Ms. Brown	.....	Mr. Martini	Y
Mr. Clement	Y	Mr. Menendez	N
Mr. Clinger	Y	Mr. Mica	Y
Mr. Clyburn	Y	Mr. Mineta	N
Mr. Coble	Y	Ms. Molinari	Y
Ms. Collins	.....	Mr. Nadler	N
Mr. Costello	Y	Ms. Norton	N
Mr. Cramer	Y	Mr. Oberstar	N
Ms. Danner	Y	Mr. Parker	.....
Mr. Deal	Y	Mr. Petri	Y
Mr. DeFazio	N	Mr. Poshard	Y
Mr. Duncan	.....	Mr. Quinn	Y
Mr. Ehlers	Y	Mr. Rahall	Y
Mr. Emerson	Y	Mrs. Seastrand	Y
Mr. Ewing	Y	Mr. Tate	Y
Mr. Filner	N	Mr. Traficant	Y
Mrs. Fowler	Y	Mr. Tucker	N
Mr. Franks	Y	Mr. Wamp	Y
Mr. Gilchrest	Y	Mr. Weller	Y
Mr. Hayes	Y	Mr. Wise	.....
Mr. Horn	Y	Mr. Young	Y
		Mr. Zeliff	Y

MINETA AMENDMENT NPS (14—38)

This amendment would strike the nonpoint source pollution language in H.R. 961 and in its place insert language relating to nonpoint source pollution and enforceable measures.

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	.....
Mr. Bachus	N	Ms. Johnson	Y
Mr. Baker	.....	Mrs. Kelly	N
Mr. Barcia	N	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N

Member	Voted	Member	Voted
Mr. Boehlert	Y	Mr. LaTourette	N
Mr. Borski	Y	Mr. Laughlin	.....
Mr. Brewster	.....	Mr. Lipinski	N
Ms. Brown	.....	Mr. Martini	N
Mr. Clement	.....	Mr. Menendez	Y
Mr. Clinger	.....	Mr. Mica	N
Mr. Clyburn	N	Mr. Mineta	Y
Mr. Coble	N	Ms. Molinari	.....
Ms. Collins	.....	Mr. Nadler	Y
Mr. Costello	N	Ms. Norton	Y
Mr. Cramer	N	Mr. Oberstar	Y
Ms. Danner	N	Mr. Parker	N
Mr. Deal	N	Mr. Petri	N
Mr. DeFazio	Y	Mr. Poshard	N
Mr. Duncan	N	Mr. Quinn	N
Mr. Ehlers	N	Mr. Rahall	Y
Mr. Emerson	N	Mrs. Seastrand	N
Mr. Ewing	N	Mr. Tate	N
Mr. Filner	Y	Mr. Traficant	N
Mrs. Fowler	N	Mr. Tucker	Y
Mr. Franks	N	Mr. Wamp	N
Mr. Gilchrest	Y	Mr. Weller	N
Mr. Hayes	N	Mr. Wise	Y
Mr. Horn	N	Mr. Young	N
		Mr. Zeliff	N

BORSKI AMENDMENT CZARA (17—35)

This amendment would modify rather than repeal the existing program under section 6217 of CZARA

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	.....
Mr. Bachus	N	Ms. Johnson	Y
Mr. Baker	N	Mrs. Kelly	N
Mr. Barcia	N	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N
Mr. Boehlert	Y	Mr. LaTourette	N
Mr. Borski	Y	Mr. Laughlin	.....
Mr. Brewster	.....	Mr. Lipinski	Y
Ms. Brown	.....	Mr. Martini	N
Mr. Clement	N	Mr. Menendez	.....
Mr. Clinger	N	Mr. Mica	N
Mr. Clyburn	Y	Mr. Mineta	Y
Mr. Coble	N	Ms. Molinari	N
Ms. Collins	.....	Mr. Nadler	Y
Mr. Costello	Y	Ms. Norton	Y
Mr. Cramer	.....	Mr. Oberstar	Y
Ms. Danner	.....	Mr. Parker	N
Mr. Deal	N	Mr. Petri	N
Mr. DeFazio	Y	Mr. Poshard	Y
Mr. Duncan	N	Mr. Quinn	N
Mr. Ehlers	N	Mr. Rahall	Y
Mr. Emerson	N	Mrs. Seastrand	N
Mr. Ewing	N	Mr. Tate	N
Mr. Filner	Y	Mr. Traficant	N
Mrs. Fowler	N	Mr. Tucker	Y
Mr. Franks	.....	Mr. Wamp	N
Mr. Gilchrest	Y	Mr. Weller	N
Mr. Hayes	N	Mr. Wise	Y
Mr. Horn	N	Mr. Young	N
		Mr. Zeliff	N

MINETA AMENDMENT 301(h) (13–41)

This amendment would delete provisions directing EPA to grant the City of San Diego a waiver from secondary sewage treatment under certain circumstances.

Member	Voted	Member	Voted
Mr. Shuster	Present	Mr. Hutchinson	.....
Mr. Bachus	N	Ms. Johnson	Y
Mr. Baker	N	Mrs. Kelly	N
Mr. Barcia	N	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N
Mr. Boehlert	N	Mr. LaTourette	N
Mr. Borski	Y	Mr. Laughlin	N
Mr. Brewster	.....	Mr. Lipinski	N
Ms. Brown	Y	Mr. Martini	N
Mr. Clement	Y	Mr. Menendez	.....
Mr. Clinger	N	Mr. Mica	N
Mr. Clyburn	Y	Mr. Mineta	Y
Mr. Coble	N	Ms. Molinari	N
Ms. Collins	.....	Mr. Nadler	Y
Mr. Costello	Y	Ms. Norton	Y
Mr. Cramer	.....	Mr. Oberstar	Y
Ms. Danner	.....	Mr. Parker	N
Mr. Deal	N	Mr. Petri	N
Mr. DeFazio	Y	Mr. Poshard	N
Mr. Duncan	N	Mr. Quinn	N
Mr. Ehlers	N	Mr. Rahall	Y
Mr. Emerson	N	Mrs. Seastrand	N
Mr. Ewing	N	Mr. Tate	N
Mr. Filner	N	Mr. Traficant	N
Mrs. Fowler	N	Mr. Tucker	N
Mr. Franks	N	Mr. Wamp	N
Mr. Gilchrist	N	Mr. Weller	N
Mr. Hayes	N	Mr. Wise	Y
Mr. Horn	N	Mr. Young	N
		Mr. Zeliff	N

MINETA SKELETAL REAUTHORIZATION (17–41)

This amendment would strike all of H.R. 961 after the enacting clause and insert a less comprehensive Clean Water Act reauthorization package focused on continued funding and stormwater and combined sewer overflow revisions.

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	.....
Mr. Bachus	N	Ms. Johnson	Y
Mr. Baker	N	Mrs. Kelly	N
Mr. Barcia	N	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N
Mr. Boehlert	N	Mr. LaTourette	N
Mr. Borski	Y	Mr. Laughlin	N
Mr. Brewster	N	Mr. Lipinski	Y
Ms. Brown	Y	Mr. Martini	N
Mr. Clement	N	Mr. Menendez	Y
Mr. Clinger	N	Mr. Mica	N
Mr. Clyburn	Y	Mr. Mineta	Y
Mr. Coble	N	Ms. Molinari	N
Ms. Collins	.....	Mr. Nadler	Y
Mr. Costello	Y	Ms. Norton	Y
Mr. Cramer	N	Mr. Oberstar	Y

Member	Voted	Member	Voted
Ms. Danner	N	Mr. Parker	N
Mr. Deal	N	Mr. Petri	N
Mr. DeFazio	Y	Mr. Poshard	N
Mr. Duncan	N	Mr. Quinn	N
Mr. Ehlers	N	Mr. Rahall	Y
Mr. Emerson	N	Mrs. Seastrand	N
Mr. Ewing	N	Mr. Tate	N
Mr. Filner	.....	Mr. Traficant	Y
Mrs. Fowler	N	Mr. Tucker	Y
Mr. Franks	N	Mr. Wamp	N
Mr. Gilchrest	Y	Mr. Weller	N
Mr. Hayes	N	Mr. Wise	Y
Mr. Horn	N	Mr. Young	N
		Mr. Zeliff	N

FINAL PASSAGE OF H.R. 961, AS AMENDED (42—16)

Member	Voted	Member	Voted
Mr. Shuster	Y	Mr. Hutchinson	.....
Mr. Bachus	Y	Ms. Johnson	N
Mr. Baker	Y	Mrs. Kelly	Y
Mr. Barcia	Y	Mr. Kim	Y
Mr. Bateman	Y	Mr. LaHood	Y
Mr. Blute	Y	Mr. Latham	Y
Mr. Boehlert	N	Mr. LaTourette	Y
Mr. Borski	N	Mr. Laughlin	Y
Mr. Brewster	Y	Mr. Lipinski	N
Ms. Brown	N	Mr. Martini	Y
Mr. Clement	Y	Mr. Menendez	N
Mr. Clinger	Y	Mr. Mica	Y
Mr. Clyburn	N	Mr. Mineta	N
Mr. Coble	Y	Ms. Molinari	Y
Ms. Collins	.....	Mr. Nadler	N
Mr. Costello	Y	Ms. Norton	N
Mr. Cramer	Y	Mr. Oberstar	N
Ms. Danner	Y	Mr. Parker	Y
Mr. Deal	Y	Mr. Petri	Y
Mr. DeFazio	N	Mr. Poshard	Y
Mr. Duncan	Y	Mr. Quinn	Y
Mr. Ehlers	N	Mr. Rahall	N
Mr. Emerson	Y	Mrs. Seastrand	Y
Mr. Ewing	Y	Mr. Tate	Y
Mr. Filner	.....	Mr. Traficant	Y
Mrs. Fowler	Y	Mr. Tucker	Y
Mr. Franks	Y	Mr. Wamp	Y
Mr. Gilchrist	N	Mr. Weller	Y
Mr. Hayes	Y	Mr. Wise	N
Mr. Horn	Y	Mr. Young	Y
		Mr. Zeliff	Y

MINETA UNFUNDED MANDATES (18—40)

This motion would have directed that the Committee report on H.R. 961 comply with the provisions of the Unfunded Mandates Reform Act of 1995 prior to the effective date contained in that Act.

Member	Voted	Member	Voted
Mr. Shuster	N	Mr. Hutchinson	.....
Mr. Bachus	.....	Ms. Johnson	Y
Mr. Baker	N	Mrs. Kelly	N
Mr. Barcia	N	Mr. Kim	N
Mr. Bateman	N	Mr. LaHood	N
Mr. Blute	N	Mr. Latham	N

Member	Voted	Member	Voted
Mr. Boehlert	N	Mr. LaTourette	N
Mr. Borski	Y	Mr. Laughlin	N
Mr. Brewster	N	Mr. Lipinski	N
Ms. Brown	Y	Mr. Martini	N
Mr. Clement	Y	Mr. Menendez	Y
Mr. Clinger	N	Mr. Mica	N
Mr. Clyburn	Y	Mr. Mineta	Y
Mr. Coble	N	Ms. Molinari	N
Ms. Collins	Y	Mr. Nadler	Y
Mr. Costello	Y	Ms. Norton	Y
Mr. Cramer	N	Mr. Oberstar	Y
Ms. Danner	N	Mr. Parker	N
Mr. Deal	N	Mr. Petri	N
Mr. DeFazio	Y	Mr. Poshard	Y
Mr. Duncan	N	Mr. Quinn	N
Mr. Ehlers	N	Mr. Rahall	Y
Mr. Emerson	N	Mrs. Seastrand	N
Mr. Ewing	N	Mr. Tate	N
Mr. Filner	.....	Mr. Traficant	Y
Mrs. Fowler	N	Mr. Tucker	Y
Mr. Franks	N	Mr. Wamp	N
Mr. Gilchrest	N	Mr. Weller	N
Mr. Hayes	N	Mr. Wise	Y
Mr. Horn	N	Mr. Young	N
		Mr. Zeliff	Y

Committee Oversight Findings

Clause 2(l)(3)(A) of rule XI requires each committee report to contain oversight findings and recommendations required pursuant to clause 2(b)(1) of rule X. The Committee has no specific oversight findings.

Oversight Findings and Recommendations of the Committee on Government Reform and Oversight

Clause 2(l)(3)(D) of rule XI requires each committee report to contain a summary of the oversight findings and recommendations made by the Government Reform and Oversight Committee pursuant to clause 4(c)(2) of rule X, whenever such findings have been timely submitted. The Committee on Transportation and Infrastructure has received no such findings or recommendations from the Committee on Government Reform and Oversight.

Committee Cost Estimate

Clause 2(l)(3)(B) of rule XI requires each committee report that accompanies a measure providing new budget authority, new spending authority, or new credit authority or changing revenues or tax expenditures to contain a cost estimate, as required by section 308(a)(1) of the Congressional Budget Act of 1974, as amended, and, when practicable with respect to estimates of new budget authority, a comparison of the total estimated funding levels for the relevant program (or programs) to the appropriate levels under current law.

Clause 7(a) of rule XIII requires committees to include their own cost estimates in certain committee reports, which include, where practicable, a comparison of the total estimated funding level for

the relevant program (or programs) with the appropriate levels under current law.

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Clause 2(l)(3)(C) of rule XI requires each committee report to include a cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974, if the cost estimate is timely submitted. The following is the Congressional Budget Office cost estimate:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 2, 1995.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed preliminary cost estimate for H.R. 961, the Clean Water Amendments of 1995. We have not completed our analysis of all the costs of this bill because we do not yet have sufficient information to project the costs of some of the authorizations. CBO will provide the committee with complete cost projections as soon as they are available.

Enactment of H.R. 961 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT A. SUNSHINE
(For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 961.

2. Bill title: Clean Water Amendments of 1995.

3. Bill status: As ordered reported by the House Committee on Transportation and Infrastructure on April 6, 1995.

4. Bill purpose: This bill would amend the Federal Water Pollution Control Act (Clean Water Act), and would provide additional authorizations of appropriations to assist state and local governments in their efforts to correct water pollution problems. The bill also would authorize such sums as are necessary to continue Clean Water Act programs conducted by the Environmental Protection Agency (EPA). In addition, H.R. 961 would repeal the current requirement for some local governments and industries to obtain permits to discharge stormwater runoff. Finally, the bill would replace the existing procedures and criteria for identifying and regulating wetlands.

5. Estimated cost to the Federal Government: Most of the spending that may occur under H.R. 961 would be subject to the avail-

ability of appropriated funds. For purposes of this estimate, CBO assumes that the bill will be enacted by the end of this fiscal year, and that all funds authorized by the bill for the 1996–2000 period will be appropriated. Estimated outlays are based on historical spending patterns of clean water programs administered by EPA. The following table summarizes the estimated budgetary impact for the bill's specified authorizations.

The bill also would increase federal receipts from penalties for violations of the Clean Water Act, but these amounts would not be significant.

The table below does not include any amounts of appropriated funds that might be necessary to compensate landowners because of the bill's amendments to section 404 of the Clean Water Act. It also does not include potential direct spending costs for the bill's provision that waives the federal government's sovereign immunity under the Clean Water Act. Costs for both of these provisions could be significant. Finally, the table does not include estimated authorizations for EPA and the U.S. Corps of Engineers to carry out their responsibilities under sections 517 and 404 of the act, respectively. CBO does not currently have sufficient information to estimate the budgetary impact of these provisions.

[By fiscal years, in millions of dollars]

	1996	1997	1998	1999	2000
Authorizations of appropriations:					
Specified authorizations	3,801	3,501	3,551	3,597	3,647
Estimated outlays	341	1,432	2,586	3,243	3,544
Estimated authorizations	[1]	[1]	[1]	[1]	[1]
Estimated outlays	[1]	[1]	[1]	[1]	[1]
Direct spending:					
Estimated budget authority	[1]	[1]	[1]	[1]	[1]
Estimated outlays	[1]	[1]	[1]	[1]	[1]
Estimated revenues	[2]	[2]	[2]	[2]	[2]

[1] CBO has insufficient information to estimate these amounts.
[2] Less than $500,000.

The costs of this bill fall primarily within budget function 300. Other budget functions, particularly defense (050), could be affected by the provision of the bill that waives the federal government's sovereign immunity under the Clean Water Act.

6. Basis of estimate: Title I—Research and related programs. Section 102 would authorize appropriations of $250 million over the 1996–2000 period for EPA to make grants to communities that are small or economically disadvantaged for planning, design, and construction of publicly owned treatment works (POTWs). An additional $250 million would be authorized over the five-year period for grants to state and local governments and nonprofit groups to research causes of water pollution, conduct technical training in water pollution abatement, and disseminate water pollution information. The bill would reauthorize EPA grants for assistance to state and interstate water pollution control programs, providing an authorization of $150 million annually over the five-year period. In addition, H.R. 961 would authorize a total of $25 million for water sanitation grants to rural and Native Alaskan villages, $21 million annually over the 1996–2000 period for the ongoing Chesapeake Bay program, and $26 million annually over the same period for the continuing Great Lakes program.

Title II—Construction grants. This title authorizes the appropriation of $300 million in 1996 for grants to fund water pollution infrastructure improvements in New Orleans, Louisiana, Bristol County, Massachusetts, and other communities with a population of less than 75,000. Half of this sum would be directed to communities with a severe need for wastewater treatment improvements. Under current law, federal construction grants made through Title II of the Clean Water Act cover 55 percent of the total project cost. H.R. 961 would change the federal share to 80 percent.

Title III—Standards and enforcement. Title III would change the way EPA established water quality criteria and standards, by requiring risk assessments and cost-benefit analysis before issuing new regulations. This title would revise the current program designed to control pollution from nonpoint sources, and would eliminate the stormwater permit program for discharges from municipalities and industries.

Title III would authorize appropriations of $19 million annually over the 1996–2000 period to continue the National Estuary program, and an additional $10 million annually to support the existing Clean Lakes program.

The bill would provide authorizations totalling $1 billion over the five-year period for grants to administer and implement land management practices and other projects to control nonpoint sources of pollution. In addition to these grants, the bill would authorize appropriations to state revolving loan funds to make loans for nonpoint source pollution control projects (see Title VI).

H.R. 961 would define municipal and industrial stormwater discharges as a nonpoint source pollutant and would repeal the current stormwater permitting program. The bill would direct states to assess stormwater discharges and submit a program to manage such discharges for EPA approval. The goal of the new stormwater program is to attain water quality standards within 15 years of EPA approval of each state's program. H.R. 961 would authorize appropriations of $20 million annually over the 1996–2000 period for grants to states to conduct stormwater research and demonstration programs.

Section 316 would explicitly waive any federal immunity from administrative orders or civil or administrative fines or penalties assessed under Clean Water Act, and would clarify that federal facilities are subject to reasonable service charges assessed in connection with a federal or state program. This provision of the bill may encourage states to seek to impose fines and penalties against the federal government under the act. If federal agencies contest these fines and penalties, it is possible that payments would have to be made from the government's Claims and Judgments Fund, if not otherwise provided from appropriated funds. The Claims and Judgments Fund is a permanent, open-ended appropriation, and any amounts paid from it would be considered direct spending. CBO cannot predict the number or the dollar amount of judgments against the government that could result from enactment of this section. Further, it is impossible to determine whether those judgments would be paid from the Claims and Judgments Fund or from appropriated funds.

H.R. 961 would provide that penalty assessments for violators of pollution laws be adjusted for inflation using the Consumer Price Index (CPI). The initial adjustment would occur no later than four years after the date of enactment of the bill; adjustments would be made every four years thereafter. CBO estimates that inflating penalty assessments would result in increased revenues of less than $500,000 annually.

Title IV—Permits and licenses. This title would make several amendments to the National Pollution Discharge Elimination System, and would codify EPA's current policy for controlling combined sewer overflows. In addition, the bill directs EPA to develop a national control policy for overflows from municipal separate sanitary sewers. No federal expenditures are explicitly authorized by this title, and CBO estimates that no significant additional resources would be needed to implement these changes.

Title V—General provisions. This title would authorize appropriations of such sums as are necessary for conducting EPA's responsibilities under the Clean Water Act. Such funds would be in addition to the bill's specified authorizations, which are largely for grants to individual states and communities. CBO does not yet have sufficient information from EPA to estimate these amounts. Some costs would result from Title III's requirements regarding risk assessment and cost-benefit analysis of regulations expected to have an economic impact of $25 million or more annually. At the same time, the bill's provisions in Titles VIII and IX would save the agency about $40 million annually, because EPA would no longer have any responsibilities for wetlands or ocean dumping regulation.

Title VI—State water pollution control revolving funds. EPA's major initiative for assisting local governments in complying with water treatment provisions of the Clean Water Act is the State Revolving Fund program (SRF). This title would authorize appropriations of $2.5 billion annually over the 1996–2000 period for SRF grants. In addition, the bill would establish a new revolving fund to help pay for local management of nonpoint source water pollution. H.R. 961 would allow states to shift any part of their grant from EPA between these two revolving funds. Under current law, states may only use SRF grants to make loans to local communities for clean water infrastructure projects. Title VI would allow states to extend the payback period on these loans for certain communities, and would allow certain economically disadvantaged communities to receive a partial grant in addition to a loan to pay for the construction of clean water infrastructure projects through the SRF program.

Title VII—Miscellaneous provisions. This title would authorize the appropriation of $50 million for grants to assist states along the U.S.-Mexican border with planning and constructing treatment works in U.S. border communities known as colonias. These communities were generally built without any water or wastewater infrastructure.

Title VIII—Wetlands conservation and management. Title VIII would rewrite section 404 of the Clean Water Act to formalize the wetlands permitting process of the U.S. Army Corps of Engineers. While the amended law would still require persons who wish to de-

velop or alter wetlands to seek a permit from the Corps, the process would be made more responsive to property owners by: (1) instituting deadlines for processing permit applications, (2) specifying new standards for defining and classifying wetlands (along with a hierarchy of allowable permit conditions that can be applied to each classification), (3) allowing more activities to be exempt from permitting or to be addressed through general (non-individual) permits, (4) establishing an administrative process under which property owners could appeal agency findings and decisions, and (5) creating a mechanism for compensating owners of affected lands (subject to the appropriation of the necessary funds). Finally, the bill would require the Corps and the Department of Agriculture to begin a 10-year project of mapping all regulated wetlands in the United States.

CBO cannot estimate the major cost of this title—compensation for landowners whose property values are affected by regulatory actions taken by the Corps under section 401. Under this title, the federal government would be required to compensate property owners when an agency action reduces the value of the affected portion of their land by 20 percent or more. The property owner would be able to seek compensation through (1) a written request to the agency, (2) binding arbitration, and/or (3) a civil action. In all cases, any compensation amount negotiated or awarded would be paid by the agency from operating funds. All obligations of the government for such compensation would be subject to the availability of appropriations. The ultimate cost of this provision would depend on future actions taken by the agency, affected property owners, and on the outcome of future arbitration and court proceedings. CBO does not currently have sufficient basis to estimate such costs.

Also, this title would raise to $5,000 and $50,000, respectively, the minimum and maximum assessments for those subject to criminal fines for violating permit requirements. The current minimum and maximum fines are $2,500 and $25,000, respectively. The fine assessed for a second offense would be raised from $50,000 to $100,000 per day of violation. Based on information provided by EPA, CBO estimates that additional revenues from these changes would be less than $500,000 annually.

Any criminal fines collected would be deposited in the Crime Victims Fund and spent in the following year. Thus, direct spending from the fund would match the increase in revenues from criminal fines with a one-year lag. Because collections from ciminal fines are expected to be insignificant, increased direct spending from the fund would also be insignificant.

Title IX—Navigational dredging. This title would amend the Marine Protection, Research, and Sanctuaries Act of 1972 to designate the Corps as the lead agency for regulating ocean dumping and dredging permits. We estimate that this title would have no significant impact on federal spending.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. Enactment of the bill would increase governmental receipts from civil, criminal, and administrative penalties,

as well as direct spending from the Crime Victims Fund. CBO estimates that any amounts involved would be insignificant.

Section 316 would explicitly waive any federal immunity from administrative orders, or civil or administrative fines or penalties assessed under the Clean Water Act, and would clarify that federal facilities are subject to reasonable service charges assessed in connection with a federal or state Clean Water Act program.

This provision may encourage states to seek to impose fines and penalties against the federal government under the Clean Water Act. If federal agencies contest these fines and penalties, it is possible that payments would have to be made from the government's Claims and Judgments Fund, if not otherwise provided from appropriated funds. The Claims and Judgments Fund is a permanent, open-ended appropriation, and any amounts paid from it would be considered direct spending. CBO cannot predict either the number or the dollar amount of judgments against the government that could result from enactment of this bill. Further, it is impossible to determine whether such potential judgments would be paid from the Claims and Judgments Fund or from appropriated funds.

8. Estimated cost to state and local governments: Major changes made by H.R. 961. From the perspective of state and local governments, this legislation would make several important changes to current law. It would authorize increased appropriations for the SRF program and modify the criteria governing eligibility for the program; codify EPA's current permitting policy for combined sewer overflow (CSO); repeal the Clean Water Act's provisions regarding permits for separate storm water discharges; and provide significant increases in money available for projects to reduce NPS pollution.

State revolving funds. Title VI would authorize appropriations of $12.5 billion over 5 years for EPA grants to state revolving funds. (Funding for SRFs in fiscal year 1995 is $1.2 billion.) Under the bill, the projects and activities that are eligible for SRF assistance would be expanded. This title also would authorize appropriations of $0.5 billion annually over the 1996–2000 period for a new SRF and for grants dedicated to managing nonpoint source pollution.

Title VI would authorize states to provide additional assistance to small cities and economically disadvantaged local governments with SRF funds. It would direct EPA and the states to establish simplified procedures for small communities to use to obtain SRF loans. This title would aid disadvantaged communities by authorizing states to extent SRF loan terms up to 40 years. Current law requires SRF loans to be repaid within 20 years. In addition, the bill would allow states to make partial grants for clean water infrastructure projects to disadvantaged communities with SRF money. The current SRF program only provides loans.

Combined sewer overflow. Section 407 of the bill would codify the CSO control policy issued by EPA on April 11, 1994. Under this policy, National Pollution Discharge Elimination System (NPDES) permits would be issued for up to 15 years to municipalities with combined storm and sanitary sewer systems that have a long-term plan to bring such discharges into compliance. Because enactment of this section would not change EPA's current policy, CBO esti-

mates that this provision would not affect spending by municipalities over the next 5 years.)

Some estimates of the total cost to correct CSO problems range from $40 billion to $100 billion over the next 20 years. EPA's estimate of the cost of correcting CSO problems is at the low end of this range. (Under the current policy, the agency estimates compliance costs for municipalities would average $3.5 billion annually over the next 15 years.)

Storm water systems. Section 322 would call on states to establish new programs to manage municipal and industrial discharges of stormwater. The goal of these programs would be to ensure that stormwater discharges comply with the requirements of the Clean Water Act within 15 years following approval of state management plans. The new state programs would replace the current stormwater permitting system, which would be repealed by the bill. Title III authorizes appropriations of $20 million annually over the next 5 years to pay for grants to states to conduct research on stormwater discharge pollutants and demonstrate innovative solutions to solving this problem.

EPA issued regulations in 1990 that govern the permitting of municipal separate storm sewer systems serving a population over 100,000, as well as storm water discharges associated with industrial activity. Phase II regulations are to cover municipal separate storm sewer systems serving fewer than 100,000 people, and other light industrial, commercial, and residential facilities. EPA was required to issue regulations for storm water discharges from phase II facilities by October 1, 1993—but has not done so. Depending on how the final phase II regulations are structured, EPA estimates that up to 82 million people could be affected by the phase II stormwater program at an estimated cost to local governments of $1 billion to $3 billion annually under current law.

The bill would repeal the phased permit systems that control stormwater discharges under current law, and would require EPA to issue technologically and financially feasible stormwater criteria by 2008. CBO believes that, over the long term, it is likely that repealing the storm water permit program would cost municipalities less than the permit program that would be developed under current law. But, based on information from EPA, CBO expects that it would take the agency 3 to 5 years to issue final regulations for the phase II program. Therefore, we anticipate that any potential savings in municipal expenses for controlling stormwater would be small over the next 5 years.

Nonpoint sources (NPS). This legislation would not impose significant additional spending requirements on states for dealing with nonpoint sources, which are largely in private hands. Nevertheless, the bill would authorize a large increase in federal assistance to states for developing and implementing management programs for controlling pollution added to waters from nonpoint sources. The bill would authorize appropriations of $1 billion over the 1996–2000 period for grants to state NPS programs. For 1995, EPA is allocating $100 million for this activity. Title III would increase the share of nonpoint source control projects that can be funded by federal grants from 60 percent to 75 percent. In addition, Title VI would authorize $500 million annually over the next 5

years for grants to new state revolving funds for lands to public and private land owners carrying out management practices and measures under a state program for controlling nonpoint source pollution. These additional funds, if appropriated, would make possible greater state assistance to property owners for remedying nonpoint sources.

Total grant funding. H.R. 961 would authorize appropriations for grants averaging $3.6 billion a year over the next five years, compared with about $2.1 billion appropriated for fiscal year 1995. Hence, state and local governments would receive 70 percent more federal assistance for compliance with the Clean Water Act if the amounts authorized are appropriated.

In a significant departure from current law, H.R. 961 would link deadlines for state and local government compliance with Clean Water Act requirements for nonpoint source pollution control programs and for stormwater discharge control programs to the level of federal funding provided. Under the bill, if the amounts appropriated for these programs are less than the amounts authorized, compliance schedules would be pushed further into the future.

State and local government clean water infrastructure needs. While the bill would authorize appropriations of grants to states that are substantially above current levels, it would not change the fact that most of the governmental costs for implementing the Clean Water Act are a state and local government responsibility. The primary cost to these governments of complying with the Clean Water Act is for constructing and operating projects for treating wastewater and controlling nonpoint sources of pollution.

EPA conducts biennial surveys of the states that attempt to estimate the cost of infrastructure projects that are needed to comply with the Clean Water Act. EPA's 1992 Needs Survey concludes that local governments need to spend $137 billion over the next 20 years to build projects necessary to comply with the existing requirements of the Clean Water Act. Unfortunately, even this huge sum probably underestimates actual needs. From 1990 to 1992, EPA's estimate of the capital costs to build clean water infrastructure improvements rose 39 percent (up $53 billion). EPA attributes most of this increase to improved documentation by states of their needs, and the use of models by EPA to include the full cost of combined sewer overflow improvements and partial costs for investments needed for urban storm water problems and for projects to reduce nonpoint source water pollution. As states improve their documentation of infrastructure needs, and EPA refines its models of undocumented needs, future needs surveys will likely describe even greater costs for complying with the Clean Water Act. The Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) estimates that $200 billion is required under current law to meet clean water infrastructure needs over the next 20 years.

H.R. 961 would make a significant departure from current law, however, by linking the compliance schedules for two aspects of the Clean Water Act to the annual levels of federal funding provided to state and local governments for clean water planning, research, and infrastructure financing. First, the bill establishes a goal of attaining water quality standards within 15 years following approval

of state nonpoint source control programs. This deadline would be extended by one year if annual appropriations for section 319 grants are less than the $1 billion authorized by the bill over the 1996–2000 period. Second, the new state stormwater management programs that would be established by Title III also allow up to 15 years following program approval for stormwater discharges to comply with the overall goals of the act. This deadline would slip by one year for every year that appropriations for grants to states to conduct stormwater discharge research and demonstration projects are less than the annual $20 million authorization specified in the bill. If EPA states agree that amounts appropriated for these activities are sufficient, but less than amounts authorized, EPA would not revise the compliance deadlines.

9. Estimate comparison: None.

10. Previous CBO estimate: None.

11. Estimate prepared by: Kim Cawley, Deborah Reis, and Melissa Sampson.

12. Estimate approved by: Peter Fontaine for Paul N. Van de Water, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Clause 2(l)(4) of rule XI requires each committee report on a bill or joint resolution of a public character to include an analytical statement describing what impact enactment of the measure would have on prices and costs in the operation of the national economy. The Committee has determined that H.R. 961 has no inflationary impact on the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL WATER POLLUTION CONTROL ACT

TITLE I—RESEARCH AND RELATED PROGRAMS

DECLARATION OF GOALS AND POLICY

SEC. 101. (a) The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—

(1) * * *

* * * * * * *

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works *and to reclaim waste water from municipal and industrial sources*;

* * * * * * *

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone and the oceans; [and]

(7) it is the national policy that programs, *including public and private sector programs using economic incentives,* for the control of nonpoint sources of pollution, *including stormwater,* be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution[.]*;*

(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;

(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;

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

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

* * * * * * *

(g) It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act. It is the further policy of Congress that nothing in this Act shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources *and in accordance with section 510(b) of this Act.*

(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.

* * * * * * *

RESEARCH, INVESTIGATIONS, TRAINING, AND INFORMATION

SEC. 104. (a) The Administrator shall establish national programs for the prevention, reduction, and elimination of pollution and as part of such programs shall—

(1) * * *

* * * * * * *

(5) in cooperation with the States, and their political subdivisions, and other Federal agencies establish, equip, and maintain a water quality surveillance system for the purpose of

monitoring the quality of the navigable waters and ground waters and the contiguous zone and the oceans and the Administrator shall, to the extent practicable, conduct such surveillance by utilizing the resources of the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the Geological Survey, and the Coast Guard, and shall report on such quality in the report required under subsection (a) of section 516; [and]

(6) initiate and promote the coordination and acceleration of research designed to develop the most effective practicable tools and techniques for measuring the social and economic costs and benefits of activities which are subject to regulations under this Act; and shall transmit a report on the results of such research to the Congress not later than January 1, 1974[.]*; and*

(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) In carrying out the provisions of subsection (a) of this section the Administrator is authorized to—

(1) * * *

* * * * * * *

(3) make grants to State water pollution control agencies, interstate agencies, *local governments,* other public or nonprofit private agencies, institutions, organizations, and individuals, for purposes stated in paragraph (1) of subsection (a) of this section;

* * * * * * *

(6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying water quality and other information pertaining to pollution and the prevention, reduction, and elimination thereof; [and]

(7) develop effective and practical processes, methods, and prototype devices for the prevention, reduction, and elimination of pollution[.]*;*

(8) make grants to nonprofit organizations to provide technical assistance and training to rural and small publicly owned treatment works 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.

* * * * * * *

(q)(1) * * *

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(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 to provide wastewater services to rural communities of 3,000 or less that are not currently served by any sewage collection or water 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.

* * * * * * *

(u) There is authorized to be appropriated (1) not to exceed $100,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, not to exceed $14,039,000 for the fiscal year ending September 30, 1980, not to exceed $20,697,000 for the fiscal year ending September 30, 1981, not to exceed $22,770,000 for the fiscal year ending September 30, 1982, such sums as may be necessary for fiscal years 1983 through 1985, and not to exceed $22,770,000 per fiscal year for each of the fiscal years 1986 through 1990, for carrying out the provisions of this section, other than subsections (g)(1) and (2), (p), (r), and (t), except that such authorizations are not for any research, development, or demonstration activity pursuant to such provisions; (2) not to exceed $7,500,000 for fiscal years 1973, 1974, and 1975, $2,000,000 for fiscal year 1977, $3,000,000 for fiscal year 1978, $3,000,000 for fiscal year 1979, $3,000,000 for fiscal year 1980, $3,000,000 for fiscal year 1981, $3,000,000 for fiscal year 1982, such sums as may be necessary for fiscal years 1983 through 1985, and $3,000,000 per fiscal year for each of the fiscal years 1986 through 1990, for carrying out the provisions of subsection (g)(1); (3) not to exceed $2,500,000 for fiscal years 1973, 1974, and 1975, $1,000,000 for fiscal year 1977, $1,500,000 for fiscal year 1978, $1,500,000 for fiscal year 1979, $1,500,000 for fiscal year 1980, $1,500,000 for fiscal year 1981, $1,500,000 for fiscal year 1982, such sums as may be necessary for fiscal years 1983 through 1985, and $1,500,000 per fiscal year for each of the fiscal years 1986 through 1990, for carrying out the provisions of subsection (g)(2); (4) not to exceed $10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (p); (5) not to exceed $15,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (r); **[**and**]** (6) not to exceed $10,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (t)*; and (7) not to exceed $50,000,000 per fiscal year for each of fiscal years 1996 through 2000 for carrying out the provisions of subsections (b)(3), (b)(8), and (b)(9), except that not less than 20 percent of the sums appropriated pursuant to this clause shall be available for carrying out the provisions of subsections (b)(8) and (b)(9).*

* * * * * * *

GRANTS FOR POLLUTION CONTROL PROGRAMS

SEC. 106. (a) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section—

(1) $60,000,000 for the fiscal year ending June 30, 1973; and

(2) $75,000,000 for the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, $100,000,000 per fiscal year for the fiscal years 1977, 1978, 1979, and 1980, $75,000,000 per fiscal year for the fiscal years 1981 and 1982, such sums as may be necessary for fiscal years 1983 through 1985, [and] $75,000,000 per fiscal year for each of the fiscal years 1986 through 1990, *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*;

for grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly or through appropriate State law enforcement officers or agencies. *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.*

* * * * * * *

[MINE WATER POLLUTION CONTROL DEMONSTRATIONS

[SEC. 107. (a) The Administrator in cooperation with the Appalachian Regional Commission and other Federal agencies is authorized to conduct, to make grants for, or to contract for, projects to demonstrate comprehensive approaches to the elimination or control of acid or other mine water pollution resulting from active or abandoned mining operations and other environmental pollution affecting water quality within all or part of a watershed or river basin, including siltation from surface mining. Such projects shall demonstrate the engineering and economic feasibility and practicality of various abatement techniques which will contribute substantially to effective and practical methods of acid or other mine water pollution elimination or control, and other pollution affecting water quality, including techniques that demonstrate the engineering and economic feasibility and practicality of using sewage sludge materials and other municipal wastes to diminish or prevent pollution affecting water quality from acid, sedimentation, or other pollutants and in such projects to restore affected lands to usefulness for forestry, agriculture, recreation, or other beneficial purposes.

[(b) Prior to undertaking any demonstration project under this section in the Appalachian region (as defined in section 403 of the Appalachian Regional Development Act of 1965, as amended), the Appalachian Regional Commission shall determine that such demonstration project is consistent with the objectives of the Appalachian Regional Development Act of 1965, as amended.

[(c) The Administrator, in selecting watersheds for the purposes of this section, shall be satisfied that the project area will not be affected adversely by the influx of acid or other mine water pollution from nearby sources.

[(d) Federal participation in such projects shall be subject to the conditions—

[(1) that the State shall acquire any land or interests therein necessary for such project; and

[(2) that the State shall provide legal and practical protection to the project area to insure against any activities which will cause future acid or other mine water pollution.

[(e) There is authorized to be appropriated $30,000,000 to carry out the provisions of this section, which sum shall be available until expended.]

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 affected 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.

* * * * * * *

[ALASKA VILLAGE DEMONSTRATION PROJECTS

[SEC. 113. (a) The Administrator is authorized to enter into agreements with the State of Alaska to carry out one or more projects to demonstrate methods to provide for central community facilities for safe water and elimination or control of pollution in those native villages of Alaska without such facilities. Such project shall include provisions for community safe water supply systems, toilets, bathing and laundry facilities, sewage disposal facilities, and other similar facilities, and educational and informational facilities and programs relating to health and hygiene. Such demonstration projects shall be for the further purpose of developing preliminary plans for providing such safe water and such elimination or control of pollution for all native villages in such State.

[(b) In carrying out this section the Administrator shall cooperate with the Secretary of Health, Education, and Welfare for the purpose of utilizing such of the personnel and facilities of that Department as may be appropriate.

[(c) The Administrator shall report to Congress not later than July 1, 1973, the results of the demonstration projects authorized by this section together with his recommendations, including and necessary legislation, relating to the establishment of a statewide program.

[(d) There is authorized to be appropriated not to exceed $2,000,000 to carry out this section. In addition, there is authorized to be appropriated to carry out this section not to exceed $200,000 for the fiscal year ending September 30, 1978, and $220,000 for the fiscal year ending September 30, 1979.

[(e) The Administrator is authorized to coordinate with the Secretary of the Department of Health, Education, and Welfare, the Secretary of the Department of Housing and Urban Development, the Secretary of the Department of the Interior, the Secretary of the Department of Agriculture, and the heads of any other departments or agencies he may deem appropriate to conduct a joint

study with representatives of the State of Alaska and the appropriate Native organizations (as defined in Public Law 92–203) to develop a comprehensive program for achieving adequate sanitation services in Alaska villages. This study shall be coordinated with the programs and projects authorized by sections 104(q) and 105(e)(2) of this Act. The Administrator shall submit a report of the results of the study, together with appropriate supporting data and such recommendations as he deems desirable, to the Committee on Environment and Public Works of the Senate and to the Committee on Public Works and Transportation of the House of Representatives not later than December 31, 1979. The Administrator shall also submit recommended administrative actions, procedures, and any proposed legislation necessary to implement the recommendations of the study no later than June 30, 1980.

[(f) The Administrator is authorized to provide technical, financial and management assistance for operation and maintenance of the demonstration projects constructed under this section, until such time as the recommendations of subsection (e) are implemented.]

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.

(g) *DEFINITIONS*.—For the purpose of this section, the term "village" shall mean an incorporated or unincorporated community with a population of ten to six hundred people living within a two-mile radius. The term "sanitation services" shall mean water supply, sewage disposal, solid waste disposal and other services nec-

essary to maintain generally accepted standards of personal hygiene and public health.

* * * * * * *

SEC. 117. CHESAPEAKE BAY.

(a) * * *

* * * * * * *

(d) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

(1) $3,000,000 per fiscal year for each of the fiscal years 1987, 1988, 1989, and 1990, *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* to carry out subsection (a); and

(2) $10,000,000 per fiscal year for each of the fiscal years 1987, 1988, 1989, and 1990, *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* for grants to States under subsection (b).

SEC. 118. GREAT LAKES.

(a) FINDINGS, PURPOSE, AND DEFINITIONS.—

(1) * * *

* * * * * * *

(3) DEFINITIONS.—For purposes of this section, the term—

(A) * * *

* * * * * * *

[(E) "Research Office" means the Great Lakes Research Office established by subsection (d);**]**

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

* * * * * * *

(I) "Lakewide Management Plan" means a written document which embodies a systematic and comprehensive ecosystem approach to restoring and protecting the beneficial uses of the open waters of each of the Great Lakes, in accordance with article VI and Annex 2 of the Great Lakes Water Quality Agreement; **[**and**]**

(J) "Remedial Action Plan" means a written document which embodies a systematic and comprehensive ecosystem approach to restoring and protecting the beneficial uses of areas of concern, in accordance with article VI and Annex 2 of the Great Lakes Water Quality Agreement**[**.**]***; and*

(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.

* * * * * * *

(c) GREAT LAKES MANAGEMENT.—

(1) FUNCTIONS.—The Program Office shall—

(A) in cooperation with appropriate Federal, State, tribal, and international agencies, and in accordance with section 101(e) of this Act, develop and implement specific action plans to carry out the responsibilities of the United States under the Great Lakes Water Quality Agreement of 1978, as amended by the Water Quality Agreement of 1987 and any other agreements and amendments**[**,**]**;

* * * * * * *

(2) GREAT LAKES WATER QUALITY GUIDANCE.—

(A) * * *

* * * * * * *

(C) Within two years after such Great Lakes guidance is published, the Great Lakes States shall adopt water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System which are consistent with such guidance. If a Great Lakes State fails to adopt such standards, policies, and procedures, the Administrator shall promulgate them not later than the end of such two-year period. When reviewing any Great Lakes State's water quality plan, the agency shall consider the extent to which the State has complied with the Great Lakes guidance issued pursuant to this section. *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.*

(7) 5-YEAR STUDY AND DEMONSTRATION PROJECTS.—(A) * * *

* * * * * * *

(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 cooperation 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) GREAT LAKES RESEARCH.—

[(1) ESTABLISHMENT OF RESEARCH OFFICE.—There is established within the National Oceanic and Atmospheric Administration the Great Lakes Research Office.

[(2) IDENTIFICATION OF ISSUES.—The Research Office shall identify issues relating to the Great Lakes resources on which research is needed. The Research Office shall submit a report to Congress on such issues before the end of each fiscal year which shall identify any changes in the Great Lakes system with respect to such issues.

[(3) INVENTORY.—The Research Office shall identify and inventory, Federal, State, university, and tribal environmental research programs (and, to the extent feasible, those of private organizations and other nations) relating to the Great Lakes system, and shall update that inventory every four years.

[(4) RESEARCH EXCHANGE.—The Research Office shall establish a Great Lakes research exchange for the purpose of facilitating the rapid identification, acquisition, retrieval, dissemination, and use of information concerning research projects which are ongoing or completed and which affect the Great Lakes system.

[(5) RESEARCH PROGRAM.—The Research Office shall develop, in cooperation with the Coordination Office, a comprehensive environmental research program and data base for the Great Lakes system. The data base shall include, but not be limited to, data relating to water quality, fisheries, and biota.

[(6) MONITORING.—The Research Office shall conduct, through the Great Lakes Environmental Research Laboratory, the National Sea Grant College program, other Federal laboratories, and the private sector, appropriate research and monitoring activities which address priority issues and current needs relating to the Great Lakes.

[(7) LOCATION.—The Research Office shall be located in a Great Lakes State.]

(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 protec-

tion 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 Council 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.

(e) RESEARCH AND MANAGEMENT COORDINATION.—

(1) JOINT PLAN.—Before October 1 of each year, [the Program Office and the Research Office shall prepare a joint research plan] *the Program Office, in consultation with the Council, shall prepare a research plan* for the fiscal year which begins in the following calendar year.

* * * * * * *

(3) HEALTH RESEARCH REPORT.—(A) Not later than September 30, 1994, the Program Office, in consultation with [the Research Office, the Agency for Toxic Substances and Disease Registry, and Great Lakes States] *the Council, the Agency for*

Toxic Substances and Disease Registry, and Great Lakes States, shall submit to the Congress a report assessing the adverse effects of water pollutants in the Great Lakes System on the health of persons in Great Lakes States and the health of fish, shellfish, and wildlife in the Great Lakes System. In conducting research in support of this report, the Administrator may, where appropriate, provide for research to be conducted under cooperative agreements with Great Lakes States.

(B) There is authorized to be appropriated to the Administrator to carry out this section not to exceed $3,000,000 for each of fiscal years 1992, 1993, and 1994, *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.*

* * * * * * *

(h) AUTHORIZATIONS OF GREAT LAKES APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section not to exceed $11,000,000 per fiscal year for the fiscal years 1987, 1988, 1989, and 1990, [and] $25,000,000 for fiscal year 1991*, 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*. Of the amounts appropriated each fiscal year—

(1) 40 percent shall be used by the Great Lakes National Program Office on demonstration projects on the feasibility of controlling and removing toxic pollutants; *and*

(2) 7 percent shall be used by the Great Lakes National Program Office for the program of nutrient monitoring[; and].

[(3) 30 percent or $3,300,000, whichever is the lesser, shall be transferred to the National Oceanic and Atmospheric Administration for use by the Great Lakes Research Office.]

* * * * * * *

LAKE CHAMPLAIN MANAGEMENT CONFERENCE

SEC. 120. (a) * * *

* * * * * * *

(d) RESEARCH PROGRAM.—[(1)] The Management Conference shall establish a multi-disciplinary environmental research program for Lake Champlain. Such research program shall be planned and conducted jointly with the Lake Champlain Research Consortium.

* * * * * * *

TITLE II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

PURPOSE

SEC. 201. (a) * * *

* * * * * * *

(g)(1) The Administrator is authorized to make grants to any State, municipality, or intermunicipal or interstate agency for the construction of publicly owned treatment works[. On and after October 1, 1984, grants under this title shall be made only for projects

for secondary treatment or more stringent treatment, or any cost effective alternative thereto, new interceptors and appurtenances, and infiltration-in-flow correction. Notwithstanding the preceding sentences, the Administrator may make grants on and after October 1, 1984, for (A) any project within the definition set forth in section 212(2) of this Act, other than for a project referred to in the preceding sentence, and (B) any purpose for which a grant may be made under sections 319 (h) and (i) of this Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution), except that not more than 20 per centum (as determined by the Governor of the State) of the amount allotted to a State under section 205 of this Act for any fiscal year shall be obligated in such State under authority of this sentence.] *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). 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.*

* * * * * * *

LIMITATIONS AND CONDITIONS

SEC. 204. (a) Before approving grants for any project for any treatment works under section 201(g)(1) the Administrator shall determine—

(1) * * *

* * * * * * *

(3) that such works have been certified by the appropriate State water pollution control agency as entitled to priority over such other works in the State in accordance with any applicable State plan under section 303(e) of this Act, except that any priority list developed pursuant to section 303(e)(3)(H) may be modified by such State in accordance with regulations promulgated by the Administrator to give higher priority for grants for the Federal share of the cost of preparing construction drawings and specifications for any treatment works utilizing processes and techniques meeting the guidelines promulgated under section 304(d)(3) of this Act for grants for the combined Federal share of the cost of preparing construction drawings and specifications and the building and erection of any treatment works meeting the requirements of the next to the last sentence of section 203(a) of this Act which utilizes processes and techniques meeting the guidelines promulgated under section 304(d)(3) of this Act[.]*;*

* * * * * * *

ALLOTMENT

SEC. 205. (a) * * *

* * * * * * *

(c)(1) * * *

(2) Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1982, 1983, 1984, [and 1985] *1985, and 1986* shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981. Notwithstanding any other provision of law, sums authorized for the fiscal year ending September 30, 1982, shall be allotted in accordance with table 3 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives. Sums authorized for the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, and September 30, 1986, shall be allotted in accordance with the following table:

States:	Fiscal years 1983 [through 1985] *through 1986*
Alabama	.011398

* * * * * * *

(g)(1) The Administrator is authorized to reserve each fiscal year not to exceed 2 per centum of the amount authorized under section 207 of this title for purposes of the allotment made to each State under this section on or after October 1, 1977, except in the case of any fiscal year beginning on or after October 1, 1981, and ending before October 1, 1994, in which case the percentage authorized to be reserved shall not exceed 4 per centum[.] or $400,000 whichever amount is the greater. Sums so reserved shall be available for making grants to such State under paragraph (2) of this subsection for the same period as sums are available from such allotment under subsection (d) of this section, and any such grant shall be available for obligation only during such period. Any grant made from sums reserved under this subsection which has not been obligated by the end of the period for which available shall be added to the amount last allotted to such State under this section and shall be immediately available for obligation in the same manner and to the same extent as such last allotment. Sums authorized to be reserved by this paragraph shall be in addition to and not in lieu of any other funds which may be authorized to carry out this subsection. *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.*

* * * * * * *

(m) DISCRETIONARY DEPOSITS INTO STATE WATER POLLUTION CONTROL REVOLVING FUNDS.—

(1) FROM CONSTRUCTION GRANT ALLOTMENTS.—In addition to any amounts deposited in a water pollution control revolving fund established by a State under title VI, upon request of the Governor of such State, the Administrator shall make available to the State for deposit, as capitalization grants, in such fund in any fiscal year beginning after September 30, 1986, such portion of the amounts allotted to such State under this section for such fiscal year as the Governor considers appropriate; ex-

cept that (A) in fiscal year 1987 such deposit may not exceed 50 percent of the amounts allotted to such State under this section for such fiscal year, and (B) in fiscal year 1988, such deposit may not exceed 75 percent of the amounts allotted to such State under this section for [this] *such* fiscal year.

* * * * * * *

AREAWIDE WASTE TREATMENT MANAGEMENT

SEC. 208. (a) * * *

* * * * * * *

(h)(1) The Secretary of the Army, acting through the Chief of Engineers, in cooperation with the Administrator is authorized and directed, upon request of the Governor or the designated planning organization, to consult with, and provide technical assistance to, any agency [designed] *designated* under subsection (a) of this section in developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

* * * * * * *

(j)(1) The Secretary of Agriculture, with the concurrence of the Administrator, and acting through the Soil Conservation Service and such other agencies of the Department of Agriculture as the Secretary may designate, is authorized and directed to establish and administer a program to enter into contracts, subject to such amounts as are provided in advance by appropriation acts, of not less than five years nor more than ten years with owners and operators having control of rural land for the purpose of installing and maintaining measures incorporating best management practices to control nonpoint source pollution for improved water quality in those States or areas for which the Administrator has approved a plan under subsection (b) of this section where the practices to which the contracts apply are certified by the management agency designated under subsection (c)(1) of this section to be consistent with such plans and will result in improved water quality. Such contracts may be entered into during the period ending not later than [September 31, 1988] *September 30, 1988*. Under such contracts the land owners or operator shall agree—

(i) * * *

* * * * * * *

SEWAGE COLLECTION SYSTEMS

SEC. 211. (a) No grant shall be made for a sewage collection system under this title unless such grant (1) is for replacement or major rehabilitation of [an existing collection system] *a collection system existing on the date of the enactment of the Clean Water Amendments of 1995* and is necessary to the total integrity and performance of the waste treatment works serving such community, or (2) is for a new collection system in [an existing community] *a community existing on such date of enactment* with [sufficient existing] *sufficient capacity existing on such date of enactment*

or planned capacity adequately to treat such collected sewage and is consistent with section 201 of this Act.

* * * * * * *

DEFINITIONS

SEC. 212. As used in this title—

(1) * * *

(2)(A) The term "treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and [any works, including site] acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or [is used for ultimate] *will be used for ultimate* disposal of residues resulting from such treatment *and acquisition of other lands, and interests in lands, which are necessary for construction*.

* * * * * * *

COST EFFECTIVENESS

SEC. 218. (a) It is the policy of Congress that a project for waste treatment and management undertaken with Federal financial assistance under this Act by any State, municipality, or intermunicipal or interstate agency shall be considered as an overall waste treatment system for waste treatment and management, and shall be that system which constitutes the most economical and cost-effective [combination of devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this Act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping power, and other equipment, and their appurtenances; extension, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or which is used for ultimate disposal of residues resulting from such treatment;] *treatment works;* water efficiency measures and devices; and any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including

waste in combined storm water and sanitary sewer systems; to meet the requirements of this Act.

* * * * * * *

(c) In furtherance of the policy set forth in subsection (a) of this section, the Administrator shall require value engineering review in connection with any treatment works, prior to approval of any grant for the erection, building, acquisition, alteration, remodeling, improvement, or extension of such treatment works, in any case in which the cost of such erection, building, acquisition, alteration, remodeling, improvement, or extension is projected to be in excess of [$10,000,000] *$25,000,000*. For purposes of this subsection, the term "value engineering review" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

* * * * * * *

TITLE III—STANDARDS AND ENFORCEMENT

EFFLUENT LIMITATIONS

SEC. 301. (a) Except as in compliance with this section and sections 302, 306, 307, 318, [402, and 404] *and 402* of this Act, the discharge of any pollutant by any person shall be unlawful. *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) In order to carry out the objective of this Act there shall be achieved—

(1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 304(b) of this Act, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 307 of this Act; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 203 of this Act prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 304(d)(1) of this Act; or,

(C) [not later than July 1, 1977,] any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedule of compliance, established pursuant to any State law or regulations, (under authority preserved by section 510) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this Act[.] *not later than 3 years after the date such limitations are established;*

(2)(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of this Act, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 315), that such elimination is technologically and economically achievable for category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of this Act, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 307 of this Act;

(C) with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b)**[**, and in no case later than March 31, 1989**]**;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 307 of this Act which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitation in accordance with subparagraph (A) of this paragraph as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 304(b)**[**, and in no case later than March 31, 1989**]**;

(E) as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b)**[**, and in no case later than March 31, 1989**]**, compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 304(a)(4) of this Act shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(4) of this Act; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than 3 years after the date such limitations are established**[**, and in no case later than March 31, 1989**]**.

(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b)[, and in no case later than March 31, 1989]; and

(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 402(a)(1) in a permit issued after enactment of the Water Quality Act of 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established[, and in no case later than March 31, 1989].

* * * * * * *

[(d) Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.]

(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.

* * * * * * *

(g) MODIFICATIONS FOR CERTAIN NONCONVENTIONAL POLLUTANTS.—

(1) GENERAL AUTHORITY.—The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, and total phenols (4AAP) [(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 any other pollutant covered by subsection (b)(2)(F).*

* * * * * * *

[(4) PROCEDURES FOR LISTING ADDITIONAL POLLUTANTS.—

[(A) GENERAL AUTHORITY.—Upon petition of any person, the Administrator may add any pollutant to the list of pollutants for which modification under this section is authorized (except for pollutants identified pursuant to section 304(a)(4) of this Act, toxic pollutants subject to section 307(a) of this Act, and the thermal component of discharges) in accordance with the provisions of this paragraph.

[(B) REQUIREMENTS FOR LISTING.—

[(i) SUFFICIENT INFORMATION.—The person petitioning for listing of an additional pollutant under this subsection shall submit to the Administrator sufficient

information to make the determinations required by this subparagraph.

[(ii) TOXIC CRITERIA DETERMINATION.—The Administrator shall determine whether or not the pollutant meets the criteria for listing as a toxic pollutant under section 307(a) of this Act.

[(iii) LISTING AS TOXIC POLLUTANT.—If the Administrator determines that the pollutant meets the criteria for listing as a toxic pollutant under section 307(a), the Administrator shall list the pollutant as a toxic pollutant under section 307(a).

[(iv) NONCONVENTIONAL CRITERIA DETERMINATION.—If the Administrator determines that the pollutant does not meet the criteria for listing as a toxic pollutant under such section and determines that adequate test methods and sufficient data are available to make the determinations required by paragraph (2) of this subsection with respect to the pollutant, the Administrator shall add the pollutant to the list of pollutants specified in paragraph (1) of this subsection for which modifications are authorized under this subsection.

[(C) REQUIREMENTS FOR FILING OF PETITIONS.—A petition for listing of a pollutant under this paragraph—

[(i) must be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 304;

[(ii) may be filed before promulgation of such guideline; and

[(iii) may be filed with an application for a modification under paragraph (1) with respect to the discharge of such pollutant.

[(D) DEADLINE FOR APPROVAL OF PETITION.—A decision to add a pollutant to the list of pollutants for which modifications under this subsection are authorized must be made within 270 days after the date of promulgation of an applicable effluent guideline under section 304.

[(E) BURDEN OF PROOF.—The burden of proof for making the determinations under subparagraph (B) shall be on the petitioner.

[(5) REMOVAL OF POLLUTANTS.—The Administrator may remove any pollutant from the list of pollutants for which modifications are authorized under this subsection if the Administrator determines that adequate test methods and sufficient data are no longer available for determining whether or not modifications may be granted with respect to such pollutant under paragraph (2) of this subsection.]

* * * * * * *

(j)(1) Any application filed under this section for a modification of the provisions of—

(A) subsection (b)(1)(B) under subsection (h) of this section shall be filed not later [that] *than* the 365th day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, except that a publicly owned treatment works which prior to Decem-

ber 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h), may apply for a modification of subsection (h) in its own right not later than 30 days after the date of the enactment of the Water Quality Act of 1987, and except as provided in paragraph (5);

* * * * * * *

(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.

[(k) In the case of any facility subject to a permit under section 402 which proposes to comply with the requirements of subsection (b)(2)(A) or (b)(2)(E) of this section by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 402, in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) or (b)(2)(E) of this section no later than two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection, if it is also determined that such innovative system has the potential for industrywide application.**]**

(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 production 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) 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.

(3) 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 reduce or eliminate the penalty for such violation if the permittee has made good-faith efforts both to implement the innovation and to comply with any interim limitations.

(4) REPORT.—Not later than 1 year after the date of the enactment of this subsection, the Administrator 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.

(l) Other than as provided in [subsection (n)] *subsections (n), (q), and (r)* of this section, the Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 307(a)(1) of this Act.

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(p) MODIFIED PERMIT FOR COAL REMINING OPERATIONS.—

(1) * * *

* * * * * * *

(2) LIMITATIONS.—The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the lev-

els being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by, the remining operation shall exceed State water quality standards established under section 303 of this Act*; 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.*

* * * * * * *

(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 such Act; and

(B) the post-mining discharges from such operation do not add pollutants to the waters of the United States in excess of those pollutants discharged from the remined area before the coal remining operation began.

(q) POLLUTION PREVENTION PROGRAMS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, 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 pollution prevention measures or practices (including recycling, source reduction, and other measures to reduce discharges or other releases of pollutants 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) 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) 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.

(r) POLLUTION REDUCTION AGREEMENTS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, 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 required 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 trad-

ing 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.

(6) 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).

(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.

(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 20,000 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 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.

(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 location 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 effec-

tive for the period applicable to all modifications granted under subsection (h).

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WATER QUALITY STANDARDS AND IMPLEMENTATION PLANS

SEC. 303. (a) * * *
(b)(1) * * *

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(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.

(c)(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each [three year period beginning with the date of enactment of the Federal Water Pollution Control Act Amendments of 1972] *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*) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

[(2)(A) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.]

(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 Administrator 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.

(B) CRITERIA FOR TOXIC POLLUTANTS.—Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act for which criteria have been published under section 304(a), the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. *Criteria for whole effluent toxicity based on laboratory biological monitoring or assessment methods shall employ an aquatic species indigenous, or representative of indigenous, and relevant to the type of waters covered by such criteria and shall take into account the accepted analytical variability associated with such methods in defining an exceedance of such criteria.* Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

(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 regarding designation of uses of waters by States.

(ii) WATERS NOT ATTAINING DESIGNATED USES.—For navigable waters not attaining designated uses, 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) WATERS ATTAINING DESIGNATED USES.—For navigable waters attaining the designated use applicable to such waters for all pollutants, the Administrator shall allow a State to modify the designated use only if the State determines that continued maintenance of the water quality necessary to support the designated use will result in significant social or economic dislocations substantially out of proportion to the benefits to be achieved from maintenance of the designated use.

(iv) 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) 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.

* * * * * * *

(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved—

(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this Act, or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this Act.

The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this Act. *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)(1)(A) * * *

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[(C) Each State shall establish 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. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.**]**

(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.

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(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.

INFORMATION AND GUIDELINES

SEC. 304. (a)(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; **[**and**]** (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters**[**.**]** *(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.*

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(8) INFORMATION ON WATER QUALITY CRITERIA.—The Administrator**[**, after consultation with appropriate State agencies and within 2 years after the date of the enactment of the Water Quality Act of 1987,**]** shall develop and publish, *consistent with section 303(c)(2)(B) of this Act,* information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.

(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).

(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).

(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).

(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).

(b) For the purposes of adopting or revising effluent limitations under this Act the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of enactment of this title, regulations, providing guidelines for effluent limitations, [and, at least annually thereafter,] *and thereafter shall* revise, if appropriate, such regulations[.]*; 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). Such regulations shall—

(1)(A) * * *

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(d)(1) * * *

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(5) 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.

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(g)(1) For the purpose of assisting States in carrying out programs under section 402 of this Act, the Administrator shall publish, within one hundred and twenty days after the date of enactment of this title, [and review at least annually thereafter and, if appropriate, revise] *and thereafter revise, as appropriate,* guidelines for pretreatment of pollutants which he determines are not susceptible to treatment by publicly owned treatment works. Guidelines under this subsection shall be established to control and prevent the discharge into the navigable waters, the contiguous zone, or the ocean (either directly or through publicly owned treatment works) of any pollutant which interferes with, passes through, or otherwise is incompatible with such works.

* * * * * * *

(i) The Administrator shall (1) within sixty days after the enactment of this title promulgate guidelines for the purpose of establishing uniform application forms and other minimum requirements for the acquisition of information from owners and operators of point-sources of discharge subject to any State program under section 402 of this Act, and (2) within sixty days from the date of enactment of this title promulgate guidelines establishing the minimum procedural and other elements of any State program under section 402 of this Act which shall include:

(A) * * *

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(D) funding, personnel qualifications, and manpower requirements (including a requirement that no board or body which approves permit applications or portions thereof shall include, as a member, [any person who receives, or has during the previous two years received, a significant portion of his income di-

rectly or indirectly from permit holders or applicants for a permit).] *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).*

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(m) SCHEDULE FOR REVIEW OF GUIDELINES.—

[(1) PUBLICATION.—Within 12 months after the date of the enactment of the Water Quality Act of 1987, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall—

[(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with subsection (b) of this section;

[(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not previously been published; and

[(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than 4 years after such date of enactment for categories identified in the first published plan or 3 years after the publication of the plan for categories identified in later published plans.]

(1) PUBLICATION.—Not later than 3 years 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).

* * * * * * *

(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.

(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 en-

actment 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.

* * * * * * *

TOXIC AND PRETREATMENT EFFLUENT STANDARDS

SEC. 307. (a)(1) * * *

[(2) Each] *(2) TOXIC EFFLUENT LIMITATIONS AND STANDARDS.—*

(A) IN GENERAL.—Each toxic pollutant listed in accordance with paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achieveable for the applicable category or class of point sources established in accordance with section 301(b)(2)(A) and 304(b)(2) of this Act. The Administrator, in his discretion, may publish in the Federal Register a proposed effluent standard (which may include a prohibition) establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, shall be applicable to such category or class only if such standard imposes more stringent requirements. [Such published effluent standard (or prohibition) shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority.] The Administrator shall allow a period of not less than sixty days following publication of any such proposed effluent standard (or prohibition) for written comment by interested persons on such proposed standard. In addition, if within thirty days of publication of any such proposed effluent standard (or prohibition) any interested person so requests, the Administrator shall hold a public hearing in connection therewith. Such a public hearing shall provide an opportunity for oral and written presentations, such cross-examination as the Administrator determines is appropriate on disputed issues of material fact, and the transcription of a verbatim record which shall be available to the public. After consideration of such comments and any information and material presented at any public hearing held on such proposed standard or prohibition, the Administrator shall promulgate such standards (or prohibition) with such modifications as the Administrator finds are jus-

tified. Such promulgation by the Administrator shall be made within two hundred and seventy days after publication of proposed standard (or prohibition). Such standard (or prohibition) shall be final except that if, on judicial review, such standard was not based on substantial evidence, the Administrator shall promulgate a revised standard. Effluent limitations shall be established in accordance with sections 301(b)(2)(A) and 304(b)(2) for every toxic pollutant referred to in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives as soon as practicable after the date of enactment of the Clean Water Act of 1977, but no later than July 1, 1980. Such effluent limitations or effluent standards (or prohibitions) shall be established for every other toxic pollutant listed under paragraph (1) of this subsection as soon as practicable after it is so listed.

(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 expeditious manner under other regulatory authorities;

(vii) the impact on national security interests; and

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

* * * * * * *

(d) After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard. *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 be deemed in compliance with the standard under the Act.

[(e) COMPLIANCE DATE EXTENSION FOR INNOVATIVE PRETREATMENT SYSTEMS.—In the case of any existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 301(k) of this Act, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed 2 years—

[(1) if the Administrator determines that the innovative system has the potential for industrywide application, and

[(2) if the Administrator (or the State in consultation with the Administrator, in any case in which the State has a pretreatment program approved by the Administrator)—

[(A) determines that the proposed extension will not cause the publicly owned treatment works to be in violation of its permit under section 402 or of section 405 or to contribute to such a violation, and

[(B) concurs with the proposed extension.]

(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 modification 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.

(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; and

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

the approved pretreatment program shall be modified to allow the publicly owned treatment works to apply 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 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 treatment 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.

(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 technology 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.

* * * * * * *

FEDERAL ENFORCEMENT

SEC. 309. (a)(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 301, 302, 306, 307, 308, 318, or 405 of this Act in a permit issued by a State under an approved permit program under section 402 [or 404] of this Act, he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

* * * * * * *

(3) Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 301, 302, 306, 307, 308, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by him or by a State [or in a permit issued under section 404 of this Act by a State], he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.

* * * * * * *

(c) CRIMINAL PENALTIES.—

(1) NEGLIGENT VIOLATIONS.—Any person who—

(A) negligently violates section 301, 302, 306, 307, 308, 311(b)(3), 318, or 405 of this Act, or any permit condition

or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act [or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State]; or

* * * * * * *

(2) KNOWING VIOLATIONS.—Any person who—

(A) knowingly violates section 301, 302, 306, 307, 308, 311(b)(3), 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act [or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State]; or

* * * * * * *

(3) KNOWING ENDANGERMENT.—

(A) GENERAL RULE.—Any person who knowingly violates section 301, 302, 306, 307, 308, 311(b)(3), 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, [or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State,] and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both fine and imprisonment.

* * * * * * *

(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).

(d) Any person who violates section 301, 302, 306, 307, 308, 311(b)(3), 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator, or by a State[, or in a permit issued under section 404 of this Act by a State,], or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act, and any person who violates any order issued by the Administrator under subsection (a) of

this section, shall be subject to a civil penalty not to exceed $25,000 per day for each violation. 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. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation. *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).*

(e) Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located [shall be joined as a party. Such State] *may be joined as a party. Any State so joined as a party* shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against the municipality in such action to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment.

* * * * * * *

(g) ADMINISTRATIVE PENALTIES.—

(1) VIOLATIONS.—Whenever on the basis of any information available[—

(A)] the Administrator finds that any person has violated section 301, 302, 306, 307, 308, 318, or 405 of this Act, or has violated any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, [or in a permit issued under section 404 by a State, or]

[(B) the Secretary of the Army (hereinafter in this subsection referred to as the "Secretary") finds that any person has violated any permit condition or limitation in a permit issued under section 404 of this Act by the Secretary,

the Administrator or Secretary, as the case may be,] *the Administrator* may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty under this subsection.

(2) CLASSES OF PENALTIES.—

(A) CLASS I.—The amount of a class I civil penalty under paragraph (1) may not exceed $10,000 per violation, except that the maximum amount of any class I civil penalty under this subparagraph shall not exceed $25,000. Before issuing an order assessing a civil penalty under this subparagraph, the Administrator [or the Secretary, as the case may be,] shall give to the person to be assessed such penalty written notice of the Administrator's [or Secretary's] proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed order. Such

hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to represent evidence.

(B) CLASS II.—The amount of a class II civil penalty under paragraph (1) may not exceed $10,000 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed $125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code. The Administrator [and the Secretary] may issue rules for discovery procedures for hearings under this subparagraph.

(3) DETERMINING AMOUNT.—In determining the amount of any penalty assessed under this subsection, the Administrator [or the Secretary, as the case may be,] shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(4) RIGHTS OF INTERESTED PERSONS.—

(A) PUBLIC NOTICE.—Before issuing an order assessing a civil penalty under this subsection the Administrator [or Secretary, as the case may be,] shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order.

* * * * * * *

(C) RIGHTS OF INTERESTED PERSONS TO A HEARING.—If no hearing is held under paragraph (2) before issuance of an order assessing a penalty under this subsection, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator [or Secretary, as the case may be,] to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator [or Secretary] shall immediately set aside such order and provide a hearing in accordance with paragraph (2)(A) in the case of a class I civil penalty and paragraph (2)(B) in the case of a class II civil penalty. If the Administrator [or Secretary] denies a hearing under this subparagraph, the Administrator [or Secretary] shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

* * * * * * *

(6) EFFECT OF ORDER.—

(A) LIMITATION ON ACTIONS UNDER OTHER SECTIONS.—Action taken by the Administrator [or the Secretary, as the case may be,] under this subsection shall not affect or limit the Administrator's [or Secretary's] authority to enforce any provision of this Act; except that any violation—

(i) with respect to which the Administrator [or the Secretary] has commenced and is diligently prosecuting an action under this subsection,

* * * * * * *

(7) EFFECT OF ACTION ON COMPLIANCE.—No action by the Administrator [or the Secretary] under this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.

(8) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed under this subsection or who commented on the proposed assessment of such penalty in accordance with paragraph (4) may obtain review of such assessment—

(A) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred, or

(B) in the case of assessment of a class II civil penalty, in United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business,

by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator [or the Secretary, as the case may be,] and the Attorney General. The Administrator [or the Secretary] shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's [or Secretary's] assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's [or Secretary's] assessment of the penalty constitutes an abuse of discretion.

(9) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become final, or

(B) after a court in an action brought under paragraph (8) has entered a final judgment in favor of the Administrator, [or the Secretary, as the case may be,]

the Administrator [or the Secretary] shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not

be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

(10) SUBPOENAS.—The Administrator [or Secretary, as the case may be,] may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

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(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).

(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.

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OIL AND HAZARDOUS SUBSTANCE LIABILITY

SEC. 311. (a) * * *

(b)(1) * * *

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(12) WITHHOLDING CLEARANCE.—If any owner, operator, or person in charge of a vessel is liable for a civil penalty under this subsection, or if reasonable cause exists to believe that the owner, operator, or person in charge may be subject to a civil penalty under this subsection, the Secretary of the Treasury, upon the request of the Secretary of the department in which the Coast Guard is operating or the Administrator, shall with respect to such vessel refuse or revoke—

(A) the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91);

(B) a permit to proceed under section 4367 of the Revised Statutes of the United States (46 U.S.C. App. 313); and

(C) a permit to depart required under section 443 of the Tariff Act of 1930 (19 U.S.C. 1443);

as applicable. Clearance or a permit refused or revoked under this paragraph may be granted upon the filing of a bond or other surety satisfactory to the Secretary of the department in which the Coast Guard is operating or the Administrator.

* * * * * * *

(h) The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) [The] *the* United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

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MARINE SANITATION DEVICES

SEC. 312. (a) * * *

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(c)(1)(A) Initial standards and regulations under this section shall become effective for new vessels two years after promulgation;

and for existing vessels five years after promulgation. Revisions of standards and regulations shall be effective upon promulgation, unless another effective date is specified, except that no revision shall take effect before the effective date of the standard or regulation being revised. *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.*

* * * * * * *

[FEDERAL FACILITIES POLLUTION CONTROL

[SEC. 313. (a) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff 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. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement, whatsoever), (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. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. 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 his 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 28 U.S.C. 1441 et seq. No officer, agent, or employee of the United States shall be personally liable for any civil penalty arising from the performance of his official duties, for which he is not otherwise liable, and the United States shall be liable only for those civil penalties arising under Federal law or imposed by a State or local court to enforce an order or the process of such court. The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any such a requirement if he 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. No such exemptions shall be granted 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. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. 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 his reason for granting such exemption. In addition to any such exemption of a particular effluent source, the President may, if he 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 three-year intervals.]

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 or runoff 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)(1)]

(b) WASTEWATER FACILITIES.—

(1) COOPERATION FOR USE OF WASTEWATER CONTROL SYSTEMS.—The Administrator shall coordinate with the head of each department, agency, or instrumentality of the Federal Government having jurisdiction over any property or facility utilizing federally owned wastewater facilities to develop a program of cooperation for utilizing wastewater control systems utilizing those innovative treatment processes and techniques for which guidelines have been promulgated under section 304(d)(3). Such program shall include an inventory of property and facilities which could utilize such processes and techniques.

(2) *LIMITATION ON CONSTRUCTION.*—Construction shall not be initiated for facilities for treatment of wastewater at any Federal property or facility after September 30, 1979, if alternative methods for wastewater treatment at such property or facility utilizing innovative treatment processes and techniques, including but not limited to methods utilizing recycle and reuse techniques and land treatment are not utilized, unless the life cycle cost of the alternative treatment works exceeds the life cycle cost of the most cost effective alternative by more than 15 per centum. The Administrator may waive the application of this paragraph in any case where the Administrator determines it to be in the public interest, or that compliance with this paragraph would interfere with the orderly compliance with the conditions of a permit issued pursuant to section 402 of this Act.

(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.

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

(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.

CLEAN LAKES

SEC. 314. (a) * * *

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(d) DEMONSTRATION PROGRAM.—

(1) * * *

(2) GEOGRAPHICAL REQUIREMENTS.—Demonstration projects authorized by this subsection shall be undertaken to reflect a variety of geographical and environmental conditions. As a priority, the Administrator shall undertake demonstration projects at Lake Champlain, New York and Vermont; Lake Houston, Texas; Beaver Lake, Arkansas; Greenwood Lake and Belcher Creek, New Jersey; Deal Lake, New Jersey; Alcyon Lake, New Jersey; Gorton's Pond, Rhode Island; Lake Washington, Rhode Island; Lake Bomoseen, Vermont; Sauk Lake, Minnesota; *Paris Twin Lakes, Illinois; Otsego Lake, New York; Raystown Lake, Pennsylvania;* and Lake Worth, Texas.

(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.

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THERMAL DISCHARGES

SEC. 316. (a) * * *

(b) *STANDARD FOR COOLING WATER INTAKE STRUCTURES.*—

(1) IN GENERAL.—Any standard established pursuant to section 301 or section 306 of this Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(2) NEW POINT SOURCE CONSIDERATIONS.—In establishing a standard referred to in paragraph (1) for cooling water intake structures located at new point sources, the Administrator shall consider, at a minimum, the following:

(A) The relative technological, engineering, and economic feasibility of possible technologies or techniques for minimizing any such adverse environmental impacts.

(B) The relative technological, engineering, and economic feasibility of possible site locations, intake structure designs, and cooling water flow techniques.

(C) The relative environmental, social, and economic costs and benefits of possible technologies, techniques, site locations, intake structure designs, and cooling water flow techniques.

(D) The projected useful life of the new point source.

(3) EXISTING POINT SOURCES.—For existing point sources, the Administrator may require the use of best technology available in the case of existing cooling water intake structures if the Administrator determines such structures are having or could have a significant adverse impact on the aquatic environment. In establishing a standard referred to in paragraph (1) for such existing point sources, the Administrator shall consider, at a minimum, the following:

(A) The relative technological, engineering, and economic feasibility of reasonably available retrofit technologies or techniques for minimizing any such adverse environmental impacts.

(B) Other mitigation measures for offsetting the anticipated adverse environmental impacts resulting from the withdrawal of cooling water.

(C) Relative environmental, social, and economic costs and benefits of possible retrofit technologies, techniques, and mitigation measures.

(D) The projected remaining useful life of the existing point source.

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

(A) NEW POINT SOURCE.—The term "new point source" means any point source the construction of which will commence after the publication of proposed regulations prescribing a standard for intake structures that will be applicable to such source if such standard is promulgated in accordance with paragraph (2).

(B) EXISTING POINT SOURCE.—The term "existing point source" means any point source that is not a new point source.

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SEC. 319. NONPOINT SOURCE MANAGEMENT PROGRAMS.

(a) STATE ASSESSMENT REPORTS.—

(1) CONTENTS.—The Governor of each State shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval, a report which—

(A) * * *

* * * * * * *

(C) describes the process, including intergovernmental coordination and public participation, for identifying [best management practices and] measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; [and]

(D) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsections (h) and (i)[.] *(including State management programs approved under section 306 of the Coastal Zone Management Act of 1972); and*

(E) identifies critical areas, giving consideration to the variety of natural, commercial, recreational, ecological, industrial, and aesthetic resources of immediate and potential value to the present and future of the Nation's waters in the Coastal Zone.

(2) INFORMATION USED IN PREPARATION.—In developing, *reviewing, and revising* the report required by this [section] *subsection*, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), and 314, *any management program of the State approved under section 306 of the Coastal Zone Management Act of 1972,* and other information as 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.

(b) STATE MANAGEMENT PROGRAMS.—

(1) IN GENERAL.—The Governor of each State, for that State or in combination with adjacent States, shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program which such State proposes to implement in the first [four] *5* fiscal years

beginning after the date of submission of such management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters.

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

(A) An identification of the [best] management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under [paragraph (1)(B)] *subsection (a)(1)(B)*, taking into account the impact of the practice *and measure* on ground water quality.

(B) An identification of programs (including, as appropriate, [nonregulatory or regulatory programs for enforcement,] *one or more of the following: voluntary 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*, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to [achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (A)] *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) A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.]

(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) [A certification of] *After the date of the enactment of the Clean Water Amendments of 1995, a certification by* the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) 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 additional authori-

ties as will be necessary to implement such management program. A schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.

* * * * * * *

(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).

(J) For coastal areas, the identification of, and continuing process for identifying, land uses which individually or cumulatively may cause or contribute significantly to degradation of—

(i) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protected designated uses, as determined by the State pursuant to the State's water quality planning processes or watershed planning efforts; and

(ii) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings.

(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 control of nonpoint sources of pollution, *including academic institutions, private industry experts, and other individual experts in water resource conservation and planning.*

* * * * * * *

(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 imple-

menting 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) ADMINISTRATIVE PROVISIONS.—

(1) COOPERATION REQUIREMENT.—Any report required by subsection (a) and any management program and report required by subsection (b) shall be developed in cooperation with local, substate regional, and interstate entities which are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 208, have worked jointly with the State on water quality management planning under section 205(j), or have been designated by the State legislative body or Governor as water quality management planning agencies *or coastal zone management agencies* for their geographic areas.

[(2) TIME PERIOD FOR SUBMISSION OF REPORTS AND MANAGEMENT PROGRAMS.—Each report and management program shall be submitted to the Administrator during the 18-month period beginning on the date of the enactment of this section.]

(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 OR DISAPPROVAL OF REPORTS AND 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 (other than subsections (h), (i), and (k)), 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) * * *

(B) adequate authority does not exist, or adequate resources are not available, to implement such program or portion*; except that such program or portion shall not be disapproved solely because the program or portion does not include enforceable policies or mechanisms*;

(C) the schedule for implementing such program or portion is not sufficiently expeditious; or

(D) the practices and measures proposed in such program or portion [are not adequate to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources and to improve the quality of navigable waters in the State] *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*;

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 thereupon have an additional [3 months] *6 months* to submit its revised management program and the Administrator shall approve or disapprove such revised program *or portion thereof* within three months of receipt.

(3) FAILURE OF STATE TO SUBMIT REPORT.—If a Governor of a State does not submit [the report] *a report or revised report* required by subsection (a) within the period specified by subsection (c)(2), the Administrator shall, within [30 months] *18 months* after the date [of the enactment of this section] *on which such report is required to be submitted under subsection (a)*, prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a). Upon completion of the requirement of the preceding sentence and after notice and opportunity for comment, the Administrator shall report to Congress on his actions pursuant to this section.

(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.

* * * * * * *

(f) TECHNICAL ASSISTANCE FOR STATE.—Upon request of a State, the Administrator may provide technical assistance to such State in developing *and implementing* a management program approved under subsection (b) for those portions of the navigable waters requested by such State.

* * * * * * *

(h) GRANT PROGRAM.—

(1) [GRANTS FOR IMPLEMENTATION OF MANAGEMENT PROGRAMS.—] *GRANTS FOR PREPARATION AND IMPLEMENTATION OF REPORTS AND MANAGEMENT PROGRAMS.*—Upon application of a State [for which a report submitted under subsection (a) and a management program submitted under subsection (b) is approved under this section], [the Administrator shall make grants] *the Administrator may make grants under this subsection,* subject to such terms and conditions as the Administrator considers appropriate, [under this subsection to such State] *to such State* for the purpose of assisting the State in [implementing such management program] *preparing a report under subsection (a) and in preparing and implementing a management program under subsection (b). Grants for implementation of such management program may be made only after such report and management program are approved under this section.* Funds reserved pursuant to section 205(j)(5) of this Act may be used to develop and implement such management program. *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).

* * * * * * *

(3) FEDERAL SHARE.—The Federal share of the cost of each [management program implemented] *report prepared and management program prepared and implemented* with Federal assistance under this subsection in any fiscal year shall not exceed [60] *75* percent of the cost incurred by the State in [implementing such management program] *preparing such report and preparing and implementing such management program* and shall be made on condition that the non-Federal share *of program implementation* is provided from non-Federal sources.

(4) LIMITATION ON GRANT AMOUNTS.—*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.* Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State. *The minimum percentage of funds allocated to each State shall be 0.5 percent of the amount appropriated.*

[(5) PRIORITY FOR EFFECTIVE MECHANISMS.—For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to States which have implemented or are proposing to implement management programs which will—

[(A) control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

[(B) implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory programs where the Administrator deems appropriate;

[(C) control interstate nonpoint source pollution problems; or

[(D) carry out ground water quality protection activities which the Administrator determines are part of a comprehensive nonpoint source pollution control program, including research, planning, ground water assessments, demonstration programs, enforcement, technical assistance, education, and training to protect ground water quality from nonpoint sources of pollution.]

(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 ac-

count the extent and nature of the nonpoint sources of pollution in each State and other relevant factors.

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[(7) LIMITATION ON USE OF FUNDS.—States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

[(8) SATISFACTORY PROGRESS.—No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2).]

(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; and

(E) 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.

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

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(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.

(i) GRANTS FOR PROTECTING GROUNDWATER QUALITY.—

(1) * * *

* * * * * * *

(3) FEDERAL SHARE; MAXIMUM AMOUNT.—The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this subsection shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this subsection in any fiscal year shall not exceed [$150,000] *$500,000*.

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(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsections (h) and (i) not to exceed $70,000,000 for fiscal year 1988, $100,000,000 per fiscal year for each of fiscal years 1989 and 1990, [and] $130,000,000 for fiscal year 1991, *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*; except that for each of such fiscal years not to exceed [$7,500,000] *$25,000,000* may be made available to carry out subsection (i). Sums appropriated pursuant to this subsection shall remain available until expended.

(k) CONSISTENCY OF OTHER PROGRAMS AND PROJECTS WITH MANAGEMENT PROGRAMS.—The Administrator shall transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (b)(2)(F) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to [allow States to review] *require coordination with States in* individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program *and the State watershed management program. Federal agencies that own or manage land, or issue licenses for activities that cause nonpoint source pollution 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.

* * * * * * *

(m) REPORTS OF ADMINISTRATOR.—

(1) [ANNUAL] *BIENNIAL REPORTS.*—Not later than January 1, [1988, and each January 1] *1995, and biennially* thereafter, the Administrator shall transmit to the Committee on Public Works and Transportation 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 nonpoint sources and improving the quality of such waters.

(2) [FINAL REPORT.—Not later than January 1, 1990, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report,] *CONTENTS.—Each report submitted under paragraph (1),* at a minimum, shall—

(A) describe the management programs being implemented by the States by types and amount of affected navigable waters, categories and subcategories of nonpoint sources, and types of [best management practices] *measures* being implemented;

(B) describe the experiences of the States in adhering to schedule and implementing [best management practices] *the measures provided by States under subsection (b)*;

* * * * * * *

(n) SET ASIDE FOR ADMINISTRATIVE PERSONNEL.—Not [less] *more* than 5 percent of the funds appropriated pursuant to subsection (j) for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.

(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.

(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 (j), 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.

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

(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.

SEC. 320. NATIONAL ESTUARY PROGRAM.

(a) MANAGEMENT CONFERENCE.—

(1) * * *

(2) CONVENING OF CONFERENCE.—

(A) * * *

[(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; Albermarle 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; and Peconic Bay, New York.]

(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.

* * * * * * *

(g) GRANTS.—

(1) * * *

(2) PURPOSES.—Grants under this subsection shall be made to pay for assisting research, surveys, studies, and modeling and other technical work necessary for the development *and implementation monitoring* of a conservation and management plan under this section.

* * * * * * *

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator not to exceed $12,000,000 per fiscal year for each of fiscal years [1987, 1988, 1989, 1990, and 1991] *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* for—

(1) * * *

* * * * * * *

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 management 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 quality 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.

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 and submit to the Administrator for approval a stormwater management program based on available information which the State proposes to implement in the first 5 fiscal years beginning after the date of submission of such management program for controlling pollution added from stormwater discharges to the navigable waters within the boundaries of the State and improving the quality of such waters.

(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 established under subsection (i) 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, byproducts, 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 discharges 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 additional 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.—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 prevention 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.

(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 demonstration 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), (c)(2)(E), or (c)(2)(F), 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.—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 discharge with respect to which a permit has been issued under section 402 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 requirements of subsection (b) 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 ad-

ditional 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) of this Act, 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) DEVELOPMENT OF STORMWATER CRITERIA.—

(1) 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 subsection (h)(1).

(2) INFORMATION TO BE USED IN DEVELOPMENT.—The stormwater discharge criteria to be established under this subsection—

(A) shall be developed from—

(i) the findings and conclusions of the demonstration programs and research conducted under subsection (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 section;

(B) 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

(C) 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.

(j) 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.

(k) REPORTS OF ADMINISTRATOR.—

(1) BIENNIAL REPORTS.—Not later than January 1, 1996, 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 assist the States in implementation of such management programs.

(l) GUIDANCE ON MODEL STORMWATER 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, 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.

(m) 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.

(n) 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.

(o) 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.

(p) 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.

(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) 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.

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 require-

ment 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 prepared 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.

(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 guidance 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

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NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

SEC. 402. (a)(1) * * *

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(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. An existing concentrated animal feeding operation that 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 may continue to use that natural topographic feature for waste storage regardless of its size, capacity, or previous use.

(b) At any time after the promulgation of the guidelines required by subsection (h)(2) of section 304 of this Act, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete discription 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 attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an 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. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 301, 302, 306, 307, and 403; *except that in no event shall a discharge limit in a permit under this section be set at a level below the lowest level that the pollutant can be reliably quantified on an interlaboratory basis for a particular test method, as determined by the Administrator using approved analytical methods under section 304(h);*

(B) are for fixed terms not exceeding [five] *10* years; [and]

* * * * * * *

(D) control the disposal of pollutants into wells; *and*

(E) can be modified as necessary to address a significant threat to human health and the environment;

* * * * * * *

(c)(1) *Upon approval of a State program under this section, the Administrator shall review administration of the program by the State once every 3 years.* Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those discharges subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the

guidelines issued under section 304(i)(2) of this Act. If the Administrator so determines, he shall notify the State or any revisons or modifications necessary to conform to such requirements or guidelines.

* * * * * * *

(d)(1) * * *

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit [as being outside the guidelines and requirements of this Act] *as presenting a substantial risk to human health and the environment*. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection [and the effluent limitations and conditions which such permit would include if it were issued by the Administrator].

* * * * * * *

(h) In the event any condition of a permit for discharges from a treatment works (as defined in section 212 of this Act) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where *the discharge involves a significant source of pollutants to the waters of the United States and* the Administrator determines pursuant to section 309(a) of this Act that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

* * * * * * *

(k) Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403, except any standard imposed under section 307 for a toxic pollutant injurious to human health. *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 be deemed in compliance with the technology-based effluent limitation 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.* Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 301, 306, or 402 of this Act, or (2) section

13 of the Act of March 3, 1899, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date of enactment which source is not subject to section 13 of the Act of March 3, 1899, the discharge by such source shall not be a violation of this Act if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

[(l) LIMITATION ON PERMIT REQUIREMENT.—

[(1) AGRICULTURAL RETURN FLOWS.—The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

[(2) STORMWATER RUNOFF FROM OIL, GAS, AND MINING OPERATIONS.—The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.**]**

(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;

(ii) if 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; or

(iii) 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 waters, taking into account analytical variability; and

(B) if, for conventional pollutants, the constituents of the conventional pollutants in the intake water are the same as 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 that does not meet the requirement of paragraph (1).

(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.

* * * * * * *

(o) ANTI-BACKSLIDING.—

(1) * * *

(2) EXCEPTIONS.—A permit with respect to which paragraph (1) applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if—

(A) * * *

* * * * * * *

(D) the permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), *301(q), 301(r),* or 316(a); **[**or**]**

(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification)**[**.**]***; or*

(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.

Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this Act or for reasons otherwise unrelated to water quality.

(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.

[(p) MUNICIPAL AND INDUSTRIAL STORMWATER DISCHARGES.—

[(1) GENERAL RULE.—Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under section 402 of this Act) shall not require a permit under this section for discharges composed entirely of stormwater.

[(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to the following stormwater discharges:

[(A) A discharge with respect to which a permit has been issued under this section before the date of the enactment of this subsection.

[(B) A discharge associated with industrial activity.

[(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.

[(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

[(E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

[(3) PERMIT REQUIREMENTS.—

[(A) INDUSTRIAL DISCHARGES.—Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 301.

[(B) MUNICIPAL DISCHARGE.—Permits for discharges from municipal storm sewers—

[(i) may be issued on a system- or jurisdiction-wide basis;

[(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

[(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

[(4) PERMIT APPLICATION REQUIREMENTS.—

[(A) INDUSTRIAL AND LARGE MUNICIPAL DISCHARGES.—Not later than 2 years after the date of the enactment of this subsection, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after such date of enactment. Not later than 4 years after such date of enactment the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

[(B) OTHER MUNICIPAL DISCHARGES.—Not later than 4 years after the date of the enactment of this subsection, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after such date of enactment. Not later than 6 years after such date of enactment, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

[(5) STUDIES.—The Administrator, in consultation with the States, shall conduct a study for the purposes of—

[(A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection;

[(B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and

[(C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.

Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of the study described in subparagraph (C).

[(6) REGULATIONS.—Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a com-

prehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.]

(p) PERMITS FOR REMEDIATING PARTY ON ABANDONED OR INACTIVE MINED LANDS.—

(1) APPLICABILITY.—Subject to this subsection, including the requirements of paragraph (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 approved within 180 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 inactive 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 remediation 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.

(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 its political subdivisions, or an Indian tribe or officers, employees, or contractors thereof; and

(ii) any person acting in cooperation with a person described in clause (i), 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 not actively mined or in temporary shutdown at the time of submission of the remediation plan and issuance of a permit under this section.

(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 pri-

vate 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.

(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 through a field bio-assessment study that a balanced and healthy population of aquatic species indigenous, or representative of indigenous, and relevant to the type of waters exists in the waters that are affected by the discharge, and if the applicable water quality standards are met for such waters; or

(B) if the permittee is a publicly owned treatment works, the source or cause of such toxicity cannot, after thorough investigation, be identified.

(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.

(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 Administrator 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 disapprove 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).

(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.

[PERMITS FOR DREDGED OR FILL MATERIAL

[SEC. 404. (a) The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.

[(b) Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 403(c), and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

[(c) The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

[(d) The term "Secretary" as used in this section means the Secretary of the Army, acting through the Chief of Engineers.

[(e)(1) In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall (A) be based on the guidelines described in subsection (b)(1) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.

[(2) No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

[(f)(1) Except as provided in paragraph (2) of this subsection, the discharge of dredge or fill material—

[(A) from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

[(B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

[(C) for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

[(D) for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;

[(E) for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

[(F) resulting from any activity with respect to which a State has an approved program under section 208(b)(4) which meets the requirements of subparagraphs (B) and (C) of such section,

is not prohibited by or otherwise subject to regulation under this section or section 301(a) or 402 of this Act (except for effluent standards or prohibitions under section 307).

[(2) Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an

area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.

[(g)(1) The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto), within its jurisdiction may submit to the Administrator a full and complete 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 attorney general (or the attorney for those State agencies which have independent legal counsel), or from the chief legal officer in the case of an 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) Not later than the tenth day after the date of the receipt of the program, and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall provide copies of such program and statement to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

[(3) Not later than the ninetieth day after the date of the receipt by the Administrator of the program and statement submitted by any State, under paragraph (1) of this subsection, the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such program and statement to the Administrator in writing.

[(h)(1) Not later than the one-hundred-twentieth day after the date of the receipt by the Administrator of a program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall determine, taking into account any comments submitted by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, pursuant to subsection (g) of this section, 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, including, but not limited to, the guidelines established under subsection (b)(1) of this section, and sections 307 and 403 of this Act;

[(ii) are for fixed terms not exceeding five years; and

[(iii) can be terminated or modified for cause including, but not limited to, the following:

[(I) violation of any condition of the permit;

[(II) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

[(III) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

[(B) To issue permits which apply, and assure compliance with, all applicable requirements of section 308 of this Act, or to inspect, monitor, enter, and requrie reports to at least the same extent as required in section 308 of this Act.

[(C) To assure 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 assure that the Administrator receives notice of each application (including a copy thereof) for a permit.

[(E) To assure 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 (and the Administrator) 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 Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing.

[(F) To assure that no permit will be issued if, in the judgment of the Secretary, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby.

[(G) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.

[(H) To assure continued coordination with Federal and Federal-State water-related planning and review processes.

[(2) If, with respect to a State program submitted under subsection (g)(1) of this section, the Administrator determines that such State—

[(A) has the authority set forth in paragraph (1) of this subsection, the Administrator shall approve the program and so notify (i) such State, and (ii) the Secretary, who upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (e) of this section for activities with respect to which a permit may be issued pursuant to such State program; or

[(B) does not have the authority set forth in paragraph (1) of this subsection, the Administrator shall so notify such State, which notification shall also describe the revisions or modifications necessary so that such State may resubmit such program for a determination by the Administrator under this subsection.

[(3) If the Administrator fails to make a determination with respect to any program submitted by a State under subsection (g)(1) of this section within one-hundred-twenty days after the date of the

receipt of such program, such program shall be deemed approved pursuant to paragraph (2)(A) of this subsection and the Administrator shall so notify such State and the Secretary who, upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (e) of this section for activities with respect to which a permit may be issued by such State.

[(4) After the Secretary receives notification from the Administrator under paragraph (2) or (3) of this subsection that a State permit program has been approved, 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 such State program to such State for appropriate action.

[(5) 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 issed by the Secretary under subsection (e) of this section with respect to activities in such State to which such general permit applies, the Secretary shall suspend the administration and enforcement of such general permit with respect to such activities.

[(i) Whenever the Administrator determines after public hearing that a State is not administering a program approved under section (h)(2)(A) of this section, in accordance with this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, the Administrator shall so notify the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days after the date of the receipt of such notification, the Administrator shall (1) withdraw approval of such program until the Administrator determines such corrective action has been taken, and (2) notify the Secretary that the Secretary shall resume the program for the issuance of permits under subsections (a) and (e) of this section for activities with respect to which the State was issuing permits and that such authority of the Secretary shall continue in effect until such time as the Administrator makes the determination described in clause (1) of this subsection and such State again has an approved program.

[(j) Each State which is administering a permit program pursuant to this section shall transmit to the Administrator (1) a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State, and (2) a copy of each proposed general permit which such State intends to issue. Not later than the tenth day after the date of the receipt of such permit application or such proposed general permit, the Administrator shall provide copies of such permit application or such proposed general permit to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service. If the Administrator intends to provide written comments to such State with respect to such permit application or such proposed general permit, he shall so notify such State not later than the thirtieth day after the date of the receipt of such application or such proposed general permit and provide such written comments to such State, after consideration of any comments made in writing with respect to such

application or such proposed general permit by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, not later than the ninetieth day after the date of such receipt. If such State is so notified by the Administrator, it shall not issue the proposed permit until after the receipt of such comments from the Administrator, or after such ninetieth day, whichever first occurs. Such State shall not issue such proposed permit after such ninetieth day if it has received such written comments in which the Administrator objects (A) to the issuance of such proposed permit and such proposed permit is one that has been submitted to the Administrator pursuant to subsection (h)(1)(E), or (B) to the issuance of such proposed permit as being outside the requirements of this section, including, but not limited to, the guidelines developed under subsection (b)(1) of this section unless it modifies such proposed permit in accordance with such comments. Whenever the Administrator objects to the issuance of a permit under the preceding sentence such written objection shall contain a statement of the reasons for such objection and the conditions which such permit would include if it were issued by the Administrator. In any case where the Administrator objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing or, if no hearing is requested within 90 days after the date of such objection, the Secretary may issue the permit pursuant to subsection (a) or (e) of this section, as the case may be, for such source in accordance with the guidelines and requirements of this Act.

[(k) In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 304 of this Act, the Administrator is authorized to waive the requirements of subsection (j) of this section at the time of the approval of a program pursuant to subsection (h)(2)(A) of this section for any category (including any class, type, or size within such category) of discharge within the State submitting such program.

[(l) The Administrator shall promulgate regulations establishing categories of discharges which he determines shall not be subject to the requirements of subsection (j) of this section in any State with a program approved pursuant to subsection (h)(2)(A) of this section. The Administrator may distinguish among classes, types, and sizes within any category of discharges.

[(m) Not later than the ninetieth day after the date on which the Secretary notifies the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service that (1) an application for a permit under subsection (a) of this section has been received by the Secretary, or (2) the Secretary proposes to issue a general permit under subsection (e) of this section, the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such application or such proposed general permit in writing to the Secretary.

[(n) Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 309 of this Act.

[(o) 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.

[(p) 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 compliance, for purposes of sections 309 and 505, with sections 301, 307, and 403.

[(q) Not later than the one-hundred-eightieth day after the date of enactment of this subsection, the Secretary shall enter into agreements with the Administrator, the Secretaries of the Departments of Agriculture, Commerce, Interior, and Transportation, and the heads of other appropriate Federal agencies to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section. Such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section will be made not later than the ninetieth day after the date the notice of such application is published under subsection (a) of this section.

[(r) The discharge of dredged or fill material as part of the construction of a Federal project specifically authorized by Congress, whether prior to or on or after the date of enactment of this subsection, is not prohibited by or otherwise subject to regulation under this section, or a State program approved under this section, or section 301(a) or 402 of the Act (except for effluent standards or prohibitions under section 307), if information on the effects of such discharge, including consideration of the guidelines developed under subsection (b)(1) of this section, is included in an environmental impact statement for such project pursuant to the National Environmental Policy Act of 1969 and such environmental impact statement has been submitted to Congress before the actual discharge of dredged or fill material in connection with the construction of such project and prior to either authorization of such project or an appropriation of funds for each construction.

[(s)(1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation 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 such condition or limitation, or the Secretary shall bring a civil action in accordance with paragraph (3) of this subsection.

[(2) A copy of any order issued under this subsection shall be sent immediately by the Secretary to the State in which the violation occurs and other affected States. Any order issued under this subsection shall be by personal service and shall state with reasonable specificity the nature of the violation, specify a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.

[(3) The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction for any violation for which he is authorized to issue a compliance order under paragraph (1) of this subsection. 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) 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) of this subsection, shall be subject to a civil penalty not to exceed $25,000 per day for each violation. 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.

[(t) Nothing in the section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable 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 the discharge of dredged or fill material 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.]

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 shall issue regulations to classify wetlands as type A, type B, or type C wetlands depending 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 application 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;

(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 prior converted cropland;

(iv) are fastlands; or

(v) 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 Government 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) SEQUENTIAL 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 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.

(B) 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 result 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 Secretary 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; and

(vi) 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 necessary 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 mitigation 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.

(f) ACTIVITIES NOT REQUIRING PERMIT.—

(1) IN GENERAL.—Activities undertaken in any wetlands or waters of the United States are exempt 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 facilities (including dikes and berms) that are used by concentrated animal feeding 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 wet-

lands 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; or

(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; or

(iv) are for construction of ice pads and ice roads and for purposes of snow storage and removal.

(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 purposes 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) LAND AREA CAP FOR TYPE A WETLANDS.—No more than 20 percent of any county, parish, or borough shall be classified as type A wetlands. Type A wetlands in Federal or State ownership (including type A wetlands in units of the National Wildlife Refuge System, the National Park System, and lands held in conservation easements) shall be included in calculating the percent of type A wetlands in a county, parish, or borough.

(3) 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 section 1222(j) of the Food Security Act of 1985 (16 U.S.C. 3822(j)).

(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 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 as agricultural lands.

(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 nonagricultural 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.

(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; and

(G) 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); 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 immediately. 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 commencing 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 statement 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 re-

spect 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.

(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 avail-

able 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 nonregulatory 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) LIMITATION ON CLASSIFICATION OF CERTAIN WATERS.—For purposes of this section, no water of the United States or wetland shall be subject to this section based solely on the fact that migratory birds use or could use such water or wetland.

(10) 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 subsection (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.

(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 production 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) WETLANDS.—The term "wetlands" means those lands that meet the criteria for delineation of lands as wetlands set forth in subsection (g).

DISPOSAL OF SEWAGE SLUDGE

SEC. 405. (a) Notwithstanding any other provision of this Act or of any other law, in the case where the disposal of sewage sludge *(also referred to as "biosolids")* resulting from the operation of a treatment works as defined in section 212 of this Act (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 402 of this Act.

* * * * * * *

(f) IMPLEMENTATION OF REGULATIONS.—

(1) * * *

* * * * * * *

(3) APPROVAL OF STATE PROGRAMS.—Notwithstanding any other provision of law, 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).

(g) STUDIES AND PROJECTS.—

(1) GRANT PROGRAM; INFORMATION GATHERING.—The Administrator is authorized to conduct or initiate scientific studies, demonstration projects, and public information and education projects which are designed to promote the safe and beneficial management or use of sewage sludge for such purposes as aiding the restoration of abandoned mine sites, conditioning soil for parks and recreation areas, agricultural and horticultural uses, *building materials,* and other beneficial purposes. For the purposes of carrying out this subsection, the Administrator may make grants to State water pollution control agencies, other public or nonprofit agencies, institutions, organizations, and individuals. In cooperation with other Federal departments and agencies, other public and private agencies, institutions, and organizations, the Administrator is authorized to collect and disseminate information pertaining to the safe and beneficial use of sewage sludge. *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.*

(2) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out the scientific studies, demonstration projects, and public information and education projects authorized in this section, there is authorized to be appropriated for fiscal years beginning after [September 30, 1986,] *September 30, 1995,* not to exceed $5,000,000.

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 Administrator, 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.

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TITLE V—GENERAL PROVISIONS

ADMINISTRATION

SEC. 501. (a) * * *

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(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.

GENERAL DEFINITIONS

SEC. 502. Except as otherwise specifically provided, when used in this Act:

(1) * * *

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(5) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body *and includes any department, agency, or instrumentality of the United States.*

(6) The term "pollutant" means [dredged spoil,] solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels" within the meaning of section 312 of this Act; [or] (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purpose is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources*; and (C) dredged or fill material.*

(7) The term "navigable waters" means the waters of the United States, including the territorial seas. *Such term does not include "waste treatment systems", as defined under section 406.*

* * * * * * *

(14) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling

stock, concentrated animal feeding operation *(other than an intermittent nonproducing livestock operation such as a stockyard or a holding and sorting facility)*, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture. *The term does not include a stormwater discharge. 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.*

* * * * * * *

(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.

(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 covered by Executive Order 12344 (42 U.S.C. 7158 note; relating to the Naval Nuclear Propulsion Program).

(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.

(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 in-

cludes 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).

(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 "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, industrial, or residential purposes consistent with local land use planning requirements.

(32) 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.

(33) 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.

(34) 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.

(35) 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.

(36) The term "mitigation banking" means wetlands restoration, enhancement, preservation or creation for the purpose of providing compensation for wetland degradation or loss.

(37) 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.

(38) The term "prior converted cropland" means any agricultural land that was manipulated (by drainage or other physical alteration to remove excess water from the land) or used for the production of any annual or perennial agricultural crop (including forage

or hay), aquacultural product, nursery product or wetlands crop, or the production of livestock before December 23, 1985.

(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.

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CITIZEN SUITS

SEC. 505. (a) * * *

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(f) For purposes of this section, the term "effluent standard or limitation under this Act" means (1) effective July 1, 1973, an unlawful act under subsection (a) of section 301 of this Act; (2) an effluent limitation or other limitation under section 301 or 302 of this Act; (3) standard or performance under section 306 of this Act; (4) prohibition, effluent standard or pretreatment standards under section 307 of this Act; (5) certification under section 401 of this Act; (6) a permit or condition thereof issued under section 402 of this Act, which is in effect under this Act (including a requirement applicable by reason of section 313 of this Act); or (7) a regulation under section 405(d) of this Act**[**,**]**.

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[STATE AUTHORITY

[SEC. 510. Except**]**

SEC. 510. STATE AUTHORITY.

(a) IN GENERAL.—Except as expressly provided in this Act, nothing in this Act shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is in effect under this Act, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, effluent standard prohibition, pretreatment standard, or standard of performance under this Act; or (2) be construed as impairing or in any

manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.

(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.

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REPORTS TO CONGRESS

SEC. 516. (a) Within ninety days following the convening of each session of Congress, the Administrator shall submit to the Congress a report, in addition to any other report required by this Act, on measures taken toward implementing the objective of this Act, including, but not limited to, (1) the progress and problems associated with developing comprehensive plans under section 102 of this Act, areawide plans under section 208 of this Act, basin plans under section 209 of this Act, and plans under section 303(e) of this Act; (2) a summary of actions taken and results achieved in the field of water pollution control research, experiments, studies, and related matters by the Administrator and other Federal agencies and by other persons and agencies under Federal grants or contracts; (3) the progress and problems associated with the development of effluent limitations and recommended control techniques; (4) the status of State programs, including a detailed summary of the progress obtained as compared to that planned under the State program plans for development and enforcement of water quality requirements; (5) the identification and status of enforcement actions pending or completed under such Act during the preceding year; (6) the status of State, interstate, and local pollution control programs established pursuant to, and assisted by, this Act; (7) a summary of the results of the survey required to be taken under section 210 of this Act; (8) his activities including recommendations under sections 109 through 111 of this Act; [and (9)] *(9) the monitoring conducted by States on the water quality of beaches and the issuance of health advisories with respect to beaches, and (10)* all reports and recommendations made by the Water Pollution Control Advisory Board.

(b)(1) The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning agencies, shall make (A) a detailed estimate of the

cost of carrying out the provisions of this Act; (B) a detailed estimate, [biennially revised] *quadrennially revised*, of the cost of construction of all needed publicly owned treatment works in all of the States and of the cost of construction of all needed publicly owned treatment works in each of the States; (C) a comprehensive study of the economic impact on affected units of government of the cost of installation of treatment facilities; and (D) a comprehensive analysis of the national requirements for and the cost of treating municipal, industrial, and other effluent to attain the water quality objectives as established by this Act or applicable State law. The Administrator shall submit such detailed estimate and such comprehensive study of such cost to the Congress no later than [February 10 of each odd-numbered year] *December 31, 1997, and December 31 of every 4th calendar year thereafter*. Whenever the Administrator, pursuant to this subsection, requests and receives an estimate of cost from a State, he shall furnish copies of such estimate together with such detailed estimate to Congress.

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[(g)] *(f)* STATE REVOLVING FUND REPORT.—

(1) * * *

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GENERAL AUTHORIZATION

SEC. 517. There are authorized to be appropriated to carry out this Act, other than sections 104, 105, 106(a), 107, 108, 112, 113, 114, 115, 206, 207, 208 (f) and (h), 209, 304, 311 (c), (d), (i), (l), and (k), 314, 315, and 317, $250,000,000 for the fiscal year ending June 30, 1973, $300,000,000 for the fiscal year ending June 30, 1974, $350,000,000 for the fiscal year ending June 30, 1975, $100,000,000 for the fiscal year ending September 30, 1977, $150,000,000 for the fiscal year ending September 30, 1978, $150,000,000 for the fiscal year ending September 30, 1979, $150,000,000 for the fiscal year ending September 30, 1980, $150,000,000 for the fiscal year ending September 30, 1981, $161,000,000 for the fiscal year ending September 30, 1982, such sums as may be necessary for fiscal years 1983 through 1985, [and] $135,000,000 per fiscal year for each of the fiscal years 1986 through 1990, *and such sums as may be necessary for each of fiscal years 1991 through 2000*.

SEC. 518. INDIAN TRIBES.

(a) * * *

* * * * * * *

(c) RESERVATION OF FUNDS.—The Administrator shall reserve each fiscal year [beginning after September 30, 1986,] before allotments to the States under [section 205(e), one-half of] *section 604(a)*, one percent of the sums appropriated under [section 207] *sections 607 and 608*. Sums reserved under this subsection shall be available only for grants for the develoment of waste treatment management plans and for the construction of sewage treatment works to serve Indian tribes, as defined in subsection (h) and former Indian reservations in Oklahoma (as determined by the Secretary of the Interior) and Alaska Native Villages as defined in Public Law 92–203.

(d) COOPERATIVE AGREEMENTS.—In order to ensure the consistent implementation of the requirements of this Act, an Indian tribe and the State or States in which the lands of such tribe are located may enter into a cooperative agreement, subject to the review and approval of the Administrator, to jointly plan and administer the requirements of this Act. *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.*

* * * * * * *

(f) GRANTS FOR NONPOINT SOURCE PROGRAMS.—The Administrator shall make grants to an Indian tribe under section 319 of this Act as though such tribe was a State. Not more than one-third of one percent of the amount appropriated for any fiscal year under section 319 may be used to make grants under this subsection. In addition to the requirements of section 319, an Indian tribe shall be required to meet the requirements of paragraphs (1), (2), and (3) of subsection ⟦(d)⟧ *(e)* of this section in order to receive such a grant.

* * * * * * *

(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.

(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 a 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.

⟦(h)⟧ *(j)* DEFINITIONS.—For purposes of this section, the term—

(1) "Federal Indian reservation" means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, *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; and

(2) "Indian tribe" means any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

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. 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.

SHORT TITLE

SEC. [519.] *521.* This Act may be cited as the "Federal Water Pollution Control Act" (commonly referred to as the Clean Water Act).

TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 601. GRANTS TO STATES FOR ESTABLISHMENT OF REVOLVING FUNDS.

(a) GENERAL AUTHORITY.—Subject to the provisions of this title, the Administrator shall make capitalization grants to each State for the purpose of establishing a water pollution control revolving fund for providing assistance [(1) for construction of treatment works (as defined in section 212 of this Act) which are publicly owned, (2) for implementing a management program under section 319, and (3) for developing and implementing a conservation and management plan under section 320.] *to accomplish the purposes of this Act.*

* * * * * * *

SEC. 602. CAPITALIZATION GRANT AGREEMENTS.

(a) * * *

(b) SPECIFIC REQUIREMENTS.—The Administrator shall enter into an agreement under this section with a State only after the State has established to the satisfaction of the Administrator that—

(1) * * *

* * * * * * *

(6) treatment works eligible under section 603(c)(1) of this Act which will be constructed in whole or in part [before fiscal year 1995] with funds directly made available by capitalization

grants under this title and section 205(m) of this Act will meet the requirements of, or otherwise be treated (as determined by the Governor of the State) under sections [201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218] *211*, 511(c)(1), and 513 of this Act in the same manner as treatment works constructed with assistance under title II of this Act;

* * * * * * *

(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.

(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) * * *

* * * * * * *

[(c) PROJECTS ELIGIBLE FOR ASSISTANCE.—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of this Act), (2) for the implementation of a management program established under section 319 of this Act, and (3) for development and implementation of a conservation and management plan under section 320 of this Act. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance.]

(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 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.

(d) TYPES OF ASSISTANCE.—Except as otherwise limited by State law, a water pollution control revolving fund of a State under this section may be used only—

(1) to make loans, on the condition that—

(A) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed 20 years *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*;

(B) annual principal and interest payments will commence not later than 1 year after completion of any project and all loans will be fully amortized [not later than 20 years after project completion] *upon the expiration of the term of the loan*;

* * * * * * *

[(5) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;]

(5) to provide loan guarantees for—

(A) similar revolving funds established by municipalities or intermunicipal agencies; and

(B) developing and implementing innovative technologies.

(6) to earn interest on fund accounts; [and]

(7) for the reasonable costs of administering the fund and conducting activities under this title, except that such amounts shall not exceed 4 percent of all grant awards to such fund under this title[.] *or $400,000 per year, whichever is greater, plus the amount of any fees collected by the State for such purpose under subsection (c)(2); and*

(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.—A State may provide financial assistance from its water pollution control revolving fund only with respect to a project which is consistent with plans, if any, developed under sections 205(j), 208, 303(e), 319, [and 320] *320, 321, and 322* of this Act.

[(g) PRIORITY LIST REQUIREMENT.—The State may provide financial assistance from its water pollution control revolving fund only with respect to a project for construction of a treatment works described in subsection (c)(1) if such project is on the State's priority list under section 216 of this Act. Such assistance may be provided regardless of the rank of such project on such list.]

(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 treatment works only if—

(1) such project is on the State's priority list under section 216 of this Act; and

(2) the recipient of such assistance is a municipality in any case in which the treatment works is privately owned.

* * * * * * *

(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.

(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) FORMULA.—Sums authorized to be appropriated to carry out this section for each of fiscal years 1989 and 1990 shall be allotted by the Administrator in accordance with section 205(c) of this Act.**]**

(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	*1.0110*
Alaska	*0.5411*
Arizona	*0.7464*
Arkansas	*0.5914*
California	*7.9031*
Colorado	*0.7232*
Connecticut	*1.3537*
Delaware	*0.4438*
District of Columbia	*0.4438*
Florida	*3.4462*
Georgia	*1.8683*
Hawaii	*0.7002*
Idaho	*0.4438*
Illinois	*4.9976*
Indiana	*2.6631*
Iowa	*1.2236*
Kansas	*0.8690*
Kentucky	*1.3570*
Louisiana	*1.0060*
Maine	*0.6999*
Maryland	*2.1867*
Massachusetts	*3.7518*
Michigan	*3.8875*
Minnesota	*1.6618*
Mississippi	*0.8146*
Missouri	*2.5063*
Montana	*0.4438*
Nebraska	*0.4624*
Nevada	*0.4438*
New Hampshire	*0.9035*
New Jersey	*4.5156*
New Mexico	*0.4438*
New York	*12.1969*

States:	*Percentage of sums authorized:*
North Carolina	*1.9943*
North Dakota	*0.4438*
Ohio	*5.0898*
Oklahoma	*0.7304*
Oregon	*1.2399*
Pennsylvania	*4.2145*
Rhode Island	*0.6071*
South Carolina	*0.9262*
South Dakota	*0.4438*
Tennessee	*1.4668*
Texas	*4.6458*
Utah	*0.4764*
Vermont	*0.4438*
Virginia	*2.2615*
Washington	*1.9217*
West Virginia	*1.4249*
Wisconsin	*2.4442*
Wyoming	*0.4438*
Puerto Rico	*1.1792*
Northern Marianas	*0.0377*
American Samoa	*0.0812*
Guam	*0.0587*
Pacific Islands Trust Territory	*0.1158*
Virgin Islands	*0.0576.*

(b) RESERVATION OF FUNDS FOR PLANNING.—Each State shall reserve each fiscal year 1 percent of the sums allotted to such State under this section for such fiscal year, or $100,000, whichever amount is greater, to carry out planning under sections 205(j) and 303(e) of this Act. *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.*

(c) ALLOTMENT PERIOD.—

(1) * * *

(2) REALLOTMENT OF UNOBLIGATED FUNDS.—The amount of any allotment not obligated by the State by the last day of the 2-year period of availability established by paragraph (1) shall be immediately reallotted by the Administrator on the basis of the same ratio as is applicable to sums allotted under [title II of this Act] *this title* for the second fiscal year of such 2-year period. None of the funds reallotted by the Administrator shall be reallotted to any State which has not obligated all sums allotted to such State in the first fiscal year of such 2-year period.

* * * * * * *

SEC. 607. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out the purposes of this title *(other than section 608)* the following sums:

(1) $1,200,000,000 per fiscal year for each of fiscal year 1989 and 1990;

(2) $2,400,000,000 for fiscal year 1991;
(3) $1,800,000,000 for fiscal year 1992;
(4) $1,200,000,000 for fiscal year 1993; [and]
(5) $600,000,000 for fiscal year 1994[.]*;*
(6) such sums as may be necessary for fiscal year 1995;
(7) $2,500,000,000 for fiscal year 1996;
(8) $2,500,000,000 for fiscal year 1997;
(9) $2,500,000,000 for fiscal year 1998;
(10) $2,500,000,000 for fiscal year 1999; and
(11) $2,500,000,000 for fiscal year 2000.

SEC. 608. STATE NONPOINT SOURCE WATER POLLUTION CONTROL REVOLVING FUNDS.

(a) GENERAL AUTHORITY.—The Administrator shall make capitalization grants to each State for the purpose of establishing a nonpoint source water pollution control revolving fund for providing assistance—

(1) to persons for carrying out management practices and measures under the State management program approved under section 319; and

(2) to agricultural producers for the development and implementation of the water quality components of a whole farm or ranch resource management plan and for implementation of management practices and measures under such a plan.

A State nonpoint source water pollution control revolving fund shall be separate from any other State water pollution control revolving fund; except that the chief executive officer of the State may transfer funds from one fund to the other fund.

(b) APPLICABILITY OF OTHER REQUIREMENTS OF THIS TITLE.—Except to the extent the Administrator, in consultation with the chief executive officers of the States, determines that a provision of this title is not consistent with a provision of this section, the provisions of sections 601 through 606 of this title shall apply to grants made under this section in the same manner and to the same extent as they apply to grants made under section 601 of this title. Paragraph (5) of section 602(b) shall apply to all funds in a State revolving fund established under this section as a result of capitalization grants made under this section; except that such funds shall first be used to assure reasonable progress toward attainment of the goals of section 319, as determined by the Governor of the State. Paragraph (7) of section 603(d) shall apply to a State revolving fund established under this section, except that the 4-percent limitation contained in such section shall not apply to such revolving fund.

(c) APPORTIONMENT OF FUNDS.—Funds made available to carry out this section for any fiscal year shall be allotted among the States by the Administrator in the same manner as funds are allotted among the States under section 319 in such fiscal year.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $500,000,000 per fiscal year for each of fiscal years 1996 through 2000.

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972

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TITLE I—OCEAN DUMPING

* * * * * * *

[ENVIRONMENTAL PROTECTION AGENCY] PERMITS

SEC. 102. (a) Except in relation to dredged material, as provided for in section 103 of this title, and in relation to radiological, chemical, and biological warfare agents, high-level radioactive waste, and medical waste, for which no permit may be issued, the [Administrator] *Secretary* may issue permits, after notice and opportunity for public hearings, for the transportation from the United States or, in the case of an agency or instrumentality of the United States, or in the case of a vessel or aircraft registered in the United States or flying the United States flag, for the transportation from a location outside the United States, of material for the purpose of dumping it into ocean waters, or for the dumping of material into the waters described in section 101(b), where the [Administrator] *Secretary* determines that such dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The [Administrator] *Secretary* shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to, the following:

[(A)] *(1)* The need for the proposed dumping.

[(B)] *(2)* The effect of such dumping on human health and welfare, including economic, esthetic, and recreational values.

[(C)] *(3)* The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shore lines and beaches.

[(D)] *(4)* The effect of such dumping on marine ecosystems, particularly with respect to—

[(i)] *(A)* the transfer, concentration, and dispersion of such material and its byproducts through biological, physical, and chemical processes,

[(ii)] *(B)* potential changes in marine ecosystem diversity, productivity, and stability, and

[(iii)] *(C)* species and community population dynamics.

[(E)] *(5)* The persistence and permanence of the effects of the dumping.

[(F)] *(6)* The effect of dumping particular volumes and concentrations of such materials.

[(G) Appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest.

[(H)] *(7)* The effect on alternate uses of oceans, such as scientific study, fishing, and other living resource exploitation, and nonliving resource exploitation.

[(I)] *(8)* In designating recommended sites, the Administrator shall utilize wherever feasible locations beyond the edge of the Continental Shelf.

[In establishing or revising such criteria, the Administrator shall consult with Federal, State, and local officials, and interested members of the general public, as may appear appropriate to the Administrator. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary.] In reviewing applications for permits, the [Administrator] *Secretary* shall make such provision for consultation with interested Federal and State agencies as he deems useful or necessary. No permit shall be issued for a dumping of material which will violate applicable water quality standards. To the extent that he may do so without relaxing the requirements of this title, the [Administrator] *Secretary*, is establishing or revising such criteria, shall apply the standards and criteria binding upon the United States under the Convention, including its Annexes.

(b) The [Administrator] *Secretary* may establish and issue various categories of permits, including the general permits described in section 104(c).

(c) DESIGNATION OF SITES.—

(1) IN GENERAL.—The [Administrator] *Secretary* shall, in a manner consistent with the criteria established pursuant to subsection (a), designate sites or time periods for dumping. The [Administrator] *Secretary* shall designate sites or time periods for dumping that will mitigate adverse impact on the environment to the greatest extent practicable.

(2) PROHIBITIONS REGARDING SITE OR TIME PERIOD.—In any case where the [Administrator] *Secretary* determines that, with respect to certain materials, it is necessary to prohibit dumping at a site or during a time period, the [Administrator] *Secretary* shall prohibit the dumping of such materials in such site or during such time period. This prohibition shall apply to any dumping at the site or during such time period. This prohibition shall apply to any dumping at the site or during the time period, including any dumping under section 103(e).

(3) DREDGED MATERIAL DISPOSAL SITES.—In the case of dredged material disposal sites, the [Administrator] *Secretary*, in conjunction with the [Secretary] *Administrator*, shall develop a site management plan for each site designated pursuant to this section. In developing such plans, the [Administrator] *Secretary* and the [Secretary] *Administrator* shall provide opportunity for public comment. Such plans shall include, but not be limited to—

(A) a baseline assessment of conditions at the site;

(B) a program for monitoring the site;

(C) special management conditions or practices to be implemented at each site that are necessary for protection of the environment;

(D) consideration of the quantity of the material to be disposed of at the site, and the presence, nature, and bioavailability of the contaminants in the material;

(E) consideration of the anticipated use of the site over the long term, including the anticipated closure date for the site, if applicable, and any need for management of the site after the closure of the site; and

(F) a schedule for review and revision of the plan (which shall not be reviewed and revised less frequently than 10 years after adoption of the plan, and every 10 years thereafter).

(4) GENERAL SITE MANAGEMENT PLAN REQUIREMENT; PROHIBITIONS.—After January 1, 1995, no site shall receive a final designation unless a management plan has been developed pursuant to this section. Beginning on January 1, 1997, no permit for dumping pursuant to this Act or authorization for dumping under section 103(e) of this Act shall be issued for a site unless such site has received a final designation pursuant to this subsection or an alternative site has been selected pursuant to section 103(b).

(5) MANAGEMENT PLANS FOR PREVIOUSLY DESIGNATED SITES.—The [Administrator] *Secretary* shall develop a site management plan for any site designated prior to January 1, 1995, as expeditiously as practicable, but not later than January 1, 1997, giving priority consideration to management plans for designated sites that are considered to have the greatest impact on the environment.

(d) No permit is required under this title for the transportation for dumping or the dumping of fish wastes, except when deposited in harbors or other protected or enclosed coastal waters, or where the [Administrator] *Secretary* finds that such deposits could endanger health, the environment, or ecological systems in a specific location. Where the [Administrator] *Secretary* makes such a finding, such material may be deposited only as authorized by a permit issued by the [Administrator] *Secretary* under this section.

(e) In the case of transportation of material by an agency or instrumentality of the United States or by a vessel or aircraft registered in the United States or flying the United States flag, from a location in a foreign State Party to the Convention, a permit issued pursuant to the authority of that foreign State Party, in accordance with Convention requirements, and which otherwise could have been issued pursuant to subsection (a) hereof, shall be accepted, for the purposes of this title, as if it were issued by the [Administrator] *Secretary* under the authority of this section: *Provided*, That in the case or an agency or instrumentality of the United States, no application shall be made for a permit to be issued pursuant to the authority of a foreign State Party to the Convention unless the [Administrator] *Secretary* concurs in the filing of such application.

[CORPS OF ENGINEERS] *DREDGED MATERIAL* PERMITS

SEC. 103. (a) * * *

(b) In making the determination required by subsection (a), the Secretary shall apply those criteria, established pursuant to section 102(a), relating to the effects of the dumping. Based upon an evaluation of the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic com-

merce of the United States, the Secretary shall make an independent determination as to the need for the dumping. The Secretary shall also make an independent determination as to other possible methods of disposal and as to appropriate locations for the dumping. In considering appropriate locations, he shall, to the maximum extent feasible, utilize the recommended sites designated [by the Administrator] pursuant to section 102(c). In any case in which the use of a designated site is not feasible, the Secretary may[, with the concurrence of the Administrator,] select an alternative site. The criteria and factors established in section 102(a) relating to site selection shall be used in selecting the alternative site in a manner consistent with the application of such factors and criteria pursuant to section 102(c). Disposal at or in the vicinity of an alternative site shall be limited to a period of not greater than 5 years unless the site is subsequently designated pursuant to section 102(c); except that an alternative site may continue to be used for an additional period of time that shall not exceed 5 years if—

(1) no feasible disposal site has been designated [by the Administrator];

(2) the continued use of the alternative site is necessary to maintain navigation and facilitate interstate or international commerce; and

(3) the [Administrator] *Secretary* determines that the continued use of the site does not pose an unacceptable risk to human health, aquatic resources, or the environment.

[(c) CONCURRENCE BY THE ADMINISTRATOR.—

[(1) NOTIFICATION.—Prior to issuing a permit to any person under this section, the Secretary shall first notify the Administrator of the Secretary's intention to do so and provide necessary and appropriate information concerning the permit to the Administrator. Within 30 days of receiving such information, the Administrator shall review the information and request any additional information the Administrator deems necessary to evaluate the proposed permit.

[(2) CONCURRENCE BY ADMINISTRATOR.—Within 45 days after receiving from the Secretary all information the Administrator considers to be necessary to evaluate the proposed permit, the Administrator shall, in writing, concur with (either entirely or with conditions) or decline to concur with the determination of the Secretary as to compliance with the criteria, conditions, and restrictions established pursuant to sections 102(a) and 102(c) relating to the environmental impact of the permit. The Administrator may request one 45-day extension in writing and the Secretary shall grant such request on receipt of the request.

[(3) EFFECT OF CONCURRENCE.—In any case where the Administrator makes a determination to concur (with or without conditions) or to decline to concur within the time period specified in paragraph (2) the determination shall prevail. If the Administrator declines to concur in the determination of the Secretary no permit shall be issued. If the Administrator concurs with conditions the permit shall include such conditions. The Administrator shall state in writing the reasons for declining to concur or for the conditions of the concurrence.

[(4) FAILURE TO ACT.—If no written documentation is made by the Administrator within the time period provided for in paragraph (2), the Secretary may issue the permit.

[(5) COMPLIANCE WITH CRITERIA AND RESTRICTIONS.—Unless the Administrator grants a waiver pursuant to subsection (d), any permit issued by the Secretary shall require compliance with such criteria and restrictions.]

(c) CONSULTATION WITH THE ADMINISTRATOR.—Prior to issuing a permit to any person under this section, the Secretary shall first consult with the Administrator.

(d) If, in any case, the Secretary finds that, in the disposition of dredged material, there is no economically feasible method or site available other than a dumping site the utilization of which would result in non-compliance with the criteria established pursuant to section 102(a) relating to the effects of dumping or with the restrictions established pursuant to section 102(c) relating to critical areas, he shall so certify and [request a waiver from the Administrator of the specific requirements involved. Within thirty days of the receipt of the waiver request, unless the Administrator finds that the dumping of the material will result in an unacceptably adverse impact on municipal water supplies, shell-fish beds, wildlife, fisheries (including spawning and breeding areas), or recreational areas, he shall grant the waiver.] *grant a waiver.*

* * * * * * *

PERMIT CONDITIONS

SEC. 104. (a) Permits issued under this title shall designate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transport for dumping will be terminated or where such dumping will occur; (4) such requirements, limitations, or conditions as are necessary to assure consistency with any site management plan approved pursuant to section 102(c); (5) any special provisions deemed necessary by the [Administrator or the Secretary, as the case may be,] *Secretary,* after consultation with the Secretary of the Department in which the Coast Guard is operating, for the monitoring and surveillance of the transportation or dumping; and (6) such other matters as the [Administrator or the Secretary, as the case may be,] *Secretary* deems appropriate. Permits issued under this title shall be issued for a period of not to exceed 7 years.

(b) The [Administrator or the Secretary, as the case may be,] *Secretary* may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him under this title as he deems appropriate.

(c) Consistent with the requirements of sections 102 and 103, but in lieu of a requirement for specific permits in such case, the [Administrator or the Secretary, as the case may be,] *Secretary* may issue general permits for the transportation for dumping, or dumping, or both, of specified materials or classes of materials for which he may issue permits, which he determines will have a minimal adverse environmental impact.

(d) Any permit issued under this title shall be reviewed periodically and, if appropriate, revised. The [Administrator or the Secretary, as the case may be,] *Secretary* may limit or deny the issuance of permits, or he may alter or revoke partially or entirely the terms of permits issued by him under this title, for the transportation for dumping, or for the dumping, or both, of specified materials or classes of materials, where he finds, based upon monitoring data from the dump site and surrounding area, that such materials cannot be dumped consistently with the criteria and other factors required to be applied in evaluating the permit application. No action shall be taken under this subsection unless the affected person or permittee shall have been given notice and opportunity for a hearing on such action as proposed.

(e) The [Administrator or the Secretary, as the case may be,] *Secretary* shall require an applicant for a permit under this title to provide such information as he may consider necessary to review and evaluate such application.

(f) Information received by the [Administrator or the Secretary, as the case may be,] *Secretary* as a part of any application or in connection with any permit granted under this title shall be available to the public as a matter of public record, at every stage of the proceeding. The final determination of the [Administrator or the Secretary, as the case may be,] *Secretary* shall be likewise available.

* * * * * * *

(h) Notwithstanding any provision of title I of the Marine Protection, Research, and Sanctuaries Act of 1972 to the contrary, during the two-year period beginning on the date of enactment of this subsection, no permit may be issued under such title I that authorizes the dumping of any low-level radioactive waste unless the [Administrator of the Environmental Protection Agency] *Secretary* determines—

(1) that the proposed dumping is necessary to conduct research—

(A) * * *

* * * * * * *

Each permit issued pursuant to this subsection shall be subject to such conditions and restrictions as the [Administrator determines] *Secretary determines* to be necessary to minimize possible adverse impacts of such dumping.

(i)(1) Two years after the date of enactment of this subsection, the [Administrator] *Secretary* may not issue a permit under this title for the disposal of radioactive waste material until the applicant, in addition to complying with all other requirements of this title, prepares, with respect to the site at which the disposal is proposed, a Radioactive Material Disposal Impact Assessment which shall include—

(A) a listing of all radioactive materials in each container to be disposed, the number of containers to be dumped, the structural diagrams of each container, the number of curies of each material in each container, and the exposure levels in rems at the inside and outside of each container;

(B) an analysis of the environmental impact of the proposed action, at the site at which the applicant desires to dispose of the material, upon human health and welfare and marine life;

(C) any adverse environmental effects at the site which cannot be avoided should the proposal be implemented;

(D) an analysis of the resulting environmental and economic conditions if the containers fail to contain the radioactive waste material when initially deposited at the specific site;

(E) a plan for the removal or containment of the disposed nuclear material if the container leaks or decomposes;

(F) a determination by each affected State whether the proposed action is consistent with its approved Coastal Zone Management Program;

(G) an analysis of the economic impact upon other users of marine resources;

(H) alternatives to the proposed action;

(I) comments and results of consultation with State officials and public hearings held in the coastal States that are nearest to the affected areas;

(J) a comprehensive monitoring plan to be carried out by the applicant to determine the full effect of the disposal on the marine environment, living resources, or human health, which plan shall include, but not be limited to, the monitoring of exterior container radiation samples, the taking of water and sediment samples, and fish and benthic animal samples, adjacent to the containers, and the acquisition of such other information as the [Administrator] *Secretary* may require; and

(K) such other information which the [Administrator] *Secretary* may require in order to determine the full effects of such disposal.

(2) The [Administrator] *Secretary*, shall include, in any permit to which paragraph (1) applies, such terms and conditions as may be necessary to ensure that the monitoring plan required under paragraph (1)(J) is fully implemented, including the analysis by the [Administrator] *Secretary* of the samples required to be taken under the plan.

(3) The [Administrator] *Secretary* shall submit a copy of the assessment prepared under paragraph (1) with respect to any permit to the Committee on [Merchant Marine and Fisheries] *Transportation and Infrastructure* of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(4)(A) Upon a determination by the [Administrator] *Secretary* that a permit to which the subsection applies should be issued, the [Administrator] *Secretary* shall transmit such a recommendation to the House of Representatives and the Senate.

(B) No permit may be issued by the [Administrator] *Secretary* under this Act for the disposal of radioactive materials in the ocean unless the Congress, by approval of a resolution described in paragraph (D) within 90 days of continuous session of the Congress beginning on the date after the date of receipt by the Senate and the House of Representatives of such recommendation, authorizes the [Administrator] *Secretary* to grant a permit to dispose of radioactive material under this Act.

(C) For purposes of this subsection—

(1) continuity of session of the Congress is broken only by an adjournment since die;

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the 90 day calendar period.

(D) For the purposes of this subsection, the term "resolution" means a joint resolution, the resolving clause of which is as follows: That the House of Representatives and the Senate approve and authorize the [Administrator of the Environmental Protection Agency] *Secretary* to grant a permit to _____ under the marine Protection, Research, and Sanctuaries Act of 1972 to dispose of radioactive materials in the ocean as recommended by the [Administrator] *Secretary* to the Congress on _____, 19_____; the first blank space therein to be filled with the appropriate applicant to dispose of nuclear material and the second blank therein to be filled with the date on which the [Administrator] *Secretary* submits the recommendation to the House of Representatives and the Senate.

SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES

SEC. 104A. (a) NEW YORK BIGHT APEX.—(1) For purposes of this subsection:

(A) The term "Apex" means the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(B) The term "Apex site" means that site within the Apex at which the dumping of municipal sludge occurred before October 1, 1983.

(C) The term "eligible authority" means any sewerage authority or other unit of State or local government that on November 2, 1983, was authorized under court order to dump municipal sludge at the Apex site.

(2) No person may apply for a permit under this title in relation to the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex unless that person is an eligible authority.

(3) The [Administrator] *Secretary* may not issue, or renew, any permit under this title that authorizes the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex after the earlier of—

(A) December 15, 1987; or

(B) the day determined by the [Administrator] *Secretary* to be the first day on which municipal sludge generated by eligible authorities can reasonably be dumped at a site designated under section 102 other than a site within the Apex.

(b) RESTRICTION ON USE OF THE 106-MILE SITE.—The [Administrator] *Secretary* may not issue or renew any permit under this title which authorizes any person, other than a person that is an eligible authority within the meaning of subsection (a)(1)(C), to dump, or to transport for the purposes of dumping, municipal sludge within the site designated under section 102(c) by the [Ad-

ministrator] *Secretary* and known as the "106-Mile Ocean Waste Dump Site" (as described in 49 F.R. 19005).

* * * * * * *

TITLE IV—REGIONAL MARINE RESEARCH PROGRAMS

* * * * * * *

REGIONAL MARINE RESEARCH BOARDS

SEC. 403. (a) ESTABLISHMENT.—A Regional Marine Research board shall be established for each of the following regions:

(1) the Gulf of Maine region, comprised of the marine and coastal waters off the State of Maine, New Hampshire, and Massachusetts (north of Cape Cod);

* * * * * * *

The [Great Lakes Research Office authorized under] *Great Lakes Research Council established by* section 118(d) of the Federal Water Pollution Control Act (33 U.S.C. 1268(d)) shall be responsible for research in the Great Lakes region and shall be considered the Great Lakes counterpart to the research program established pursuant to this title.

* * * * * * *

SECTION 6217 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990

[SEC. 6217. PROTECTING COASTAL WATERS.

[(a) IN GENERAL.—

[(1) PROGRAM DEVELOPMENT.—Not later than 30 months after the date of the publication of final guidance under subsection (g), each State for which a management program has been approved pursuant to section 306 of the Coastal Zone Management Act of 1972 shall prepare and submit to the Secretary and the Administrator a Coastal Nonpoint Pollution Control Program for approval pursuant to this section. The purpose of the program shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other State and local authorities.

[(2) PROGRAM COORDINATION.—A State program under this section shall be coordinated closely with State and local water quality plans and programs developed pursuant to sections 208, 303, 319, and 320 of the Federal Water Pollution Control Act (33 U.S.C. 1288, 1313, 1329, and 1330) and with State plans developed pursuant to the Coastal Zone Management Act of 1972, as amended by this Act. The program shall serve as an update and expansion of the State nonpoint source management program developed under section 319 of the Federal Water Pollution Control Act, as the program under that section relates to land and water uses affecting coastal waters.

[(b) PROGRAM CONTENTS.—Each State program under this section shall provide for the implementation, at a minimum, of man-

agement measures in conformity with the guidance published under subsection (g), to protect coastal waters generally, and shall also contain the following:

[(1) IDENTIFYING LAND USES.—The identification of, and a continuing process for identifying, land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of—

[(A) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, as determined by the State pursuant to its water quality planning processes; or

[(B) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources.

[(2) IDENTIFYING CRITICAL COASTAL AREAS.—The identification of, and a continuing process for identifying, critical coastal areas adjacent to coastal waters referred to in paragraph (1)(A) and (B), within which any new land uses or substantial expansion of existing land uses shall be subject to management measures in addition to those provided for in subsection (g).

[(3) MANAGEMENT MEASURES.—The implementation and continuing revision from time to time of additional management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that are necessary to achieve and maintain applicable water quality standards under section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313) and protect designated uses.

[(4) TECHNICAL ASSISTANCE.—The provision of technical and other assistance to local governments and the public for implementing the measures referred to in paragraph (3), which may include assistance in developing ordinances and regulations, technical guidance, and modeling to predict and assess the effectiveness of such measures, training, financial incentives, demonstration projects, and other innovations to protect coastal water quality and designated uses.

[(5) PUBLIC PARTICIPATION.—Opportunities for public participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means.

[(6) ADMINISTRATIVE COORDINATION.—The establishment of mechanisms to improve coordination among State agencies and between State and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety, through the use of joint project review, memoranda of agreement, or other mechanisms.

[(7) STATE COASTAL ZONE BOUNDARY MODIFICATION.—A proposal to modify the boundaries of the State coastal zone as the coastal management agency of the State determines is necessary to implement the recommendations made pursuant to subsection (e). If the coastal management agency does not have the authority to modify such boundaries, the program shall in-

clude recommendations for such modifications to the appropriate State authority.

[(c) PROGRAM SUBMISSION, APPROVAL, AND IMPLEMETATION.—

[(1) REVIEW AND APPROVAL.—Within 6 months after the date of submission by a State of a program pursuant to this section, the Secretary and the Administrator shall jointly review the program. The program shall be approved if—

[(A) the Secretary determines that the portions of the program under the authority of the Secretary meet the requirements of this section and the Administrator concurs with that determination; and

[(B) the Administrator determines that the portions of the program under the authority of the Administrator meet the requirements of this section and the Secretary concurs with that determination.

[(2) IMPLEMENTATION OF APPROVED PROGRAM.—If the program of a State is approved in accordance with paragraph (1), the State shall implement the program, including the management measures included in the program pursuant to subsection (b), through—

[(A) changes to the State plan for control of nonpoint source pollution approved under section 319 of the Federal Water Pollution Control Act; and

[(B) changes to the State coastal zone management program developed under section 306 of the Coastal Zone Management Act of 1972, as amended by this Act.

[(3) WITHHOLDING COASTAL MANAGEMENT ASSISTANCE.—If the Secretary finds that a coastal State has failed to submit an approvable program as required by this section, the Secretary shall withhold for each fiscal year until such a program is submitted a portion of grants otherwise available to the State for the fiscal year under section 306 of the Coastal Zone Management Act of 1972, as follows:

[(A) 10 percent for fiscal year 1996.

[(B) 15 percent for fiscal year 1997.

[(C) 20 percent for fiscal year 1998.

[(D) 30 percent for fiscal year 1999 and each fiscal year thereafter.

[The Secretary shall make amounts withheld under this paragraph available to coastal States having programs approved under this section.

[(4) WITHHOLDING WATER POLLUTION CONTROL ASSISTANCE.—If the Administrator finds that a coastal State has failed to submit an approvable program as required by this section, the Administrator shall withhold from grants available to the State under section 319 of the Federal Water Pollution Control Act, for each fiscal year until such a program is submitted, an amount equal to a percentage of the grants awarded to the State for the preceding fiscal year under that section, as follows:

[(A) For fiscal year 1996, 10 percent of the amount awarded for fiscal year 1995.

[(B) For fiscal year 1997, 15 percent of the amount awarded for fiscal year 1996.

[(C) For fiscal year 1998, 20 percent of the amount awarded for fiscal year 1997.

[(D) For fiscal year 1999 and each fiscal year thereafter, 30 percent of the amount awarded for fiscal year 1998 or other preceding fiscal year.

[The Administrator shall make amounts withheld under this paragraph available to States having programs approved pursuant to this subsection.

[(d) TECHNICAL ASSISTANCE.—The Secretary and the Administrator shall provide technical assistance to coastal States and local governments in developing and implementing programs under this section. Such assistance shall include—

[(1) methods for assessing water quality impacts associated with coastal land uses;

[(2) methods for assessing the cumulative water quality effects of coastal development;

[(3) maintaining and from time to time revising an inventory of model ordinances, and providing other assistance to coastal States and local governments in identifying, developing, and implementing pollution control measures; and

[(4) methods to predict and assess the effects of coastal land use management measures on coastal water quality and designated uses.

[(e) INLAND COASTAL ZONE BOUNDARIES.—

[(1) REVIEW.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall, within 18 months after the effective date of this title, review the inland coastal zone boundary of each coastal State program which has been approved or is proposed for approval under section 306 of the Coastal Zone Management Act of 1972, and evaluate whether the State's coastal zone boundary extends inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the State.

[(2) RECOMMENDATION.—If the Secretary, in consultation with the Administrator, finds that modifications to the inland boundaries of a State's coastal zone are necessary for that State to more effectively manage land and water uses to protect coastal waters, the Secretary, in consultation with the Administrator, shall recommend appropriate modifications in writing to the affected State.

[(f) FINANCIAL ASSISTANCE.—

[(1) IN GENERAL.—Upon request of a State having a program approved under section 306 of the Coastal Zone Management Act of 1972, the Secretary, in consultation with the Administrator, may provide grants to the State for use for developing a State program under this section.

[(2) AMOUNT.—The total amount of grants to a State under this subsection shall not exceed 50 percent of the total cost to the State of developing a program under this section.

[(3) STATE SHARE.—The State share of the cost of an activity carried out with a grant under this subsection shall be paid from amounts from non-Federal sources.

[(4) ALLOCATION.—Amounts available for grants under this subsection shall be allocated among States in accordance with

regulations issued pursuant to section 306(c) of the Coastal Zone Management Act of 1972, except that the Secretary may use not more than 25 percent of amounts available for such grants to assist States which the Secretary, in consultation with the Administrator, determines are making exemplary progress in preparing a State program under this section or have extreme needs with respect to coastal water quality.

[(g) GUIDANCE FOR COASTAL NONPOINT SOURCE POLLUTION CONTROL.—

[(1) IN GENERAL.—The Administrator, in consultation with the Secretary and the Director of the United States Fish and Wildlife Service and other Federal agencies, shall publish (and periodically revise thereafter) guidance for specifying management measures for sources of nonpoint pollution in coastal waters.

[(2) CONTENT.—Guidance under this subsection shall include, at a minimum—

[(A) a description of a range of methods, measures, or practices, including structural and nonstructural controls and operation and maintenance procedures, that constitute each measure;

[(B) a description of the categories and subcategories of activities and locations for which each measure may be suitable;

[(C) an identification of the individual pollutants or categories or classes of pollutants that may be controlled by the measures and the water quality effects of the measures;

[(D) quantitative estimates of the pollution reduction effects and costs of the measures;

[(E) a description of the factors which should be taken into account in adapting the measures to specific sites or locations; and

[(F) any necessary monitoring techniques to accompany the measures to assess over time the success of the measures in reducing pollution loads and improving water quality.

[(3) PUBLICATION.—The Administrator, in consultation with the Secretary, shall publish—

[(A) proposed guidance pursuant to this subsection not later than 6 months after the date of the enactment of this Act; and

[(B) final guidance pursuant to this subsection not later than 18 months after such effective date.

[(4) NOTICE AND COMMENT.—The Administrator shall provide to coastal States and other interested persons an opportunity to provide written comments on proposed guidance under this subsection.

[(5) MANAGEMENT MEASURES.—For purposes of this subsection, the term "management measures" means economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of 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.

[(h) AUTHORIZATIONS OF APPROPRIATIONS.—

[(1) ADMINISTRATOR.—There is authorized to be appropriated to the Administrator for use for carrying out this section not more than $1,000,000 for each of fiscal years 1992, 1993, and 1994.

[(2) SECRETARY.—(A) Of amounts appropriated to the Secretary for a fiscal year under section 318(a)(4) of the Coastal Zone Management Act of 1972, as amended by this Act, not more than $1,000,000 shall be available for use by the Secretary for carrying out this section for that fiscal year, other than for providing in the form of grants under subsection (f).

[(B) There is authorized to be appropriated to the Secretary for use for providing in the form of grants under subsection (f) not more than—

[(i) $6,000,000 for fiscal year 1992;

[(ii) $12,000,000 for fiscal year 1993;

[(iii) $12,000,000 for fiscal year 1994; and

[(iv) $12,000,000 for fiscal year 1995.

[(i) DEFINITIONS.—In this section—

[(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

[(2) the term "coastal State" has the meaning given the term "coastal state" under section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453);

[(3) each of the terms "coastal waters" and "coastal zone" has the meaning that term has in the Coastal Zone Management Act of 1972;

[(4) the term "coastal management agency" means a State agency designated pursuant to section 306(d)(6) of the Coastal Zone Management Act of 1972;

[(5) the term "land use" includes a use of waters adjacent to coastal waters; and

[(6) the term "Secretary" means the Secretary of Commerce.]

ADDITIONAL VIEWS

We believe it is crucial for the Great Lakes region to have water quality standards that are specific to the regions needs. Since the Great Lakes contain 95% of the nation's fresh water and 20% of the world's fresh water, it is important to protect this resource.

The Great Lakes initiative is a six year long cooperative effort to restore the Great Lakes ecosystem, based on the newest and best scientific information available. Under the Great Lakes Critical Programs Act, a bi-partisan effort signed by President Bush in 1990, the Environmental Protection Agency, states and tribes, were to develop a standard for water quality that is specific to the needs of the region. Critics of this program claimed that the EPA was too strict in it's interpretation of the GLI and as a result, the GLI was rewritten to provide more flexibility for compliance. The end result, we believe, is a workable, uniform water quality standard for the Great Lakes region.

The GLI establishes minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes and the surrounding states: Michigan, Illinois, Indiana, Minnesota, New York, Pennsylvania, and Ohio. The purpose of this rule is to provide consistency within the region to improve the water quality of the lakes and prevent further pollution. This means all states must cooperate on the GLI, and no state or its businesses will receive an unfair competitive advantage because they have lesser water quality standards. The EPA rewrote their original rule because of concern about the potential impact on competitiveness of the region and to provide needed flexibility for efficient implementation.

A remaining controversy which came up during the committee process is the supposed ambiguity of the EPA's final guidance on a state's requirement to adopt controls which are "as protective so the corresponding provision in the Great Lakes guidance". We believe that Mr. Petri's amendment on the Great Lakes Initiative helps to define this level of protection. This language cites "scientifically defensible," providing an "overall level of protection comparable to," the Guidance, "taking into account the specific circumstances of the State's waters." We believe that this means that the States must and will provide a level of protection essentially equivalent to that provided by the Guidance.

It is important that the law be defined in this way or we open the door to much litigation. Certainly, more litigation was not the intent of our colleagues when crafting this bill.

VERNON J. EHLERS.
STEVE C. LATOURETTE.

SUPPLEMENTAL VIEWS BY CONGRESSMAN SHERWOOD BOEHLERT AND CONGRESSMAN WAYNE GILCHREST

The Clean Water Act is widely acknowledged as one of our nation's most effective environmental statutes. In testimony before the House Water Resources and Environmental Subcommittee over the last three years, representatives of industry, states and the environmental community have repeatedly highlighted the enormous successes that have been achieved through the Clean Water Act.

Unfortunately, H.R. 961 fails to build on many of the successes of the Clean Water Act. In fact, H.R. 961 repeals or undermines many of the provisions which serve as the foundation for the success of Clean Water Act. H.R. 961 would remove over 60 percent of our nation's remaining wetlands from any level of protection, completely repeal the stormwater provisions in the Clean Water Act, undermine efforts to control nonpoint source pollution, weaken standards governing industrial pollution discharges, and repeal the entire Coastal Zone nonpoint source pollution program.

In protecting our nation's most valuable natural resource, clean water, we can either move forward, retain the status quo, or retreat from the improvements that have been made. H.R. 961 is a retreat from existing law and we are committed to moving forward with efforts to improve the quality of America's lakes, rivers, and coastal waters.

WETLANDS PROTECTION

Section 404 of the Clean Water Act has been the source of much public confusion and frustration, and we share the committee's stated commitment to clarifying and improving federal wetlands policy. We also believe that greater statutory definition is necessary for a sound wetlands program. Unfortunately, Title VIII of H.R. 961 represents a significant reduction in wetlands protection. The bill as reported seeks to implement an unworkable wetlands definition, an unscientific classification system, and an enormously expensive compensation program.

Wetlands serve many valuable purposes. They provide critical habitat for many species of fish and wildfowl; they provide a natural filtration system which absorbs nitrates, toxics and other harmful substances before they reach water bodies; they provide a natural source of flood control, and they recharge aquifers. Wetlands loss is inevitably accompanied by diminishing wildlife populations, deteriorating water quality, and increased flooding in the case of riverine wetlands.

Unfortunately, H.R. 961 would remove from federal protection over half of the wetlands in the United States, while reducing the level of protection for the remainder. We believe the resulting wetlands loss would be significant.

The most objectionable provision of Title VIII is the new definition of what constitutes a wetland. The requirements set forth in the proposed Section 404(g) Subparagraph B(iv) would declassify wetlands which do not display surface water for at least 21 days during the growing season. Under this definition, a parcel of land could be a swamp for all of the non-growing season, the first 20 days of the growing season, and the last 20 days of the growing season and still not be afforded any protection. Additionally, bogs and other areas which are continually saturated just below the surface would not be considered wetlands under H.R. 961. We believe there are a great many parcels of land that do not display surface water for 21 days in the growing season, yet serve wetland functions.

The wetlands definition in H.R. 961 essentially mirrors the proposed 1991 revisions to the Manual for Identifying and Delineating Wetlands. The 1991 revisions were abandoned as unworkable as it was found that roughly half of all protected wetlands would have been de-classified. The inter-agency field testing report on the 1991 proposal concluded:

> We believe the proposed manual is not technically sound. We believe it will take considerable time to revise it to an acceptable method. Due to the considerable amount of resources that would be required to resolve the issues, we recommend that strong consideration be given to abandoning this effort * * *

Inasmuch as the 1991 definition was found to be unsound and impractical, we must question the wisdom of writing a similar definition into statute.

The compensation provisions in Title VIII, while cloaked in the language of the Fifth Amendment, are in fact a major departure from over 2000 years of constitutional jurisprudence as to what constitutes a "taking" for the public good. In fact, wetlands policy is designed to prevent people from using their property in such a manner that they adversely affect other private property or public property. The issue of constitutional "takings" is an ongoing issue for the federal court system.

H.R. 961 would provide compensation to any landowner whose property values were diminished by 20 percent or more as a result of wetlands regulation. In the few cases where federal courts have found regulatory takings, the loss in value is far greater than 20 percent. As Justice Antonin Scalia wrote in the landmark *Lucas* decision, regulatory takings occur "where regulation denies all economically beneficial or productive use of the land." Scalia later described a regulatory taking as "total deprivation of beneficial use."

Supporters of the compensation provisions claim they are neither an expensive entitlement, nor an effort to eliminate environmental protection. Obviously, these cannot both be true. The federal government will be forced to either make significant outlays as the cost of wetlands enforcement, or opt for non-enforcement of wetlands laws. The cost of this provision will be increased deficit spending or environmental degradation, neither of which we can afford.

We can sympathize with the committee's desire to classify wetlands according to their importance, but we remain skeptical about the A–B–C system contained in H.R. 961. We do not believe there is adequate science available to make such a determination at this time, and that the proposal is politically, rather than scientifically based. The most damning evidence of the political nature of this is found in the proposed Section 404(g) Subparagraph C requirement that no more than 20 percent of the wetlands in any county, borough, or parish may be considered Type A wetlands. This provision quite obviously subverts the question of wetlands' environmental significance to the political consideration of county borders. Under such a provision, many of our nation's most important wetlands, such as the Everglades, could be destroyed.

We believe that the House should reject Title VIII of the bill and wait for the release of the NAS study. With that information, the committee could develop a scientifically sound wetlands policy that would preserve our wetlands inventory. Unfortunately, the committee has chosen to proceed in haste.

In summary, the bill contains a demonstrably unworkable definition of a wetland that will de-classify a significant portion of our nation's wetlands. It creates a compensation system that will result in an increase of dollars in new federal spending, significant non-enforcement, or both. It contains a classification system based on politics rather than science. And, it ignores a congressionally-mandated study into wetlands functions and values. We believe this to be a serious mistake with dire consequences for our nation's water quality and wildlife.

THE REPEAL OF STORMWATER PROVISIONS IN THE ACT

Stormwater management is a critical component to the improvement of water quality in the United States. Today, over 25% of all water quality impairment in our nation is the result of stormwater discharges into lakes, streams and estuaries. Because stormwater pollution often encompasses large geographic areas and enormous volumes of water it poses significant challenges to those working to control its impact.

However, section 402(p) of the Clean Water Act has been responsible for important steps toward reducing stormwater pollution. Today, 342 large cities and 134,000 industrial facilities already have stormwater permits to control this important source of water pollution. Controlling stormwater runoff in communities under 100,000 and at light industry facilities poses more significant problems. Recognizing this EPA has issued a six year moratorium on any additional requirements on communities under 100,000.

H.R. 961, would turn back the clock on efforts to control stormwater pollution by repealing section 402(p) of the Clean Water Act. We cannot, and should not, turn our backs on this major source of water pollution. Stormwater is responsible water quality impairment in urban and coastal areas across this nation. Swimming and fishing are not available to millions of Americans because of stormwater pollution. To repeal the provisions in the Clean Water Act that address stormwater pollution is short sighted and irresponsible.

THE WEAKENING OF POLLUTION DISCHARGE STANDARDS

One of the cornerstones of the Clean Water Act's success since 1972 is the way in which point source discharges have been held to comparable standards across the nation. Prior to the enactment of the Clean Water Act, states often lowered water quality requirements to attract water polluting industries. States were in bidding wars to have the least protective water quality standards. Recognizing this problem, Congress acted to curtail the problem of balkanization and low water quality standards, and to establish a level playing field for industry, by requiring industrial and sewage treatment plants to have discharge permits under the Clean Water Act.

We believe that H.R. 961 would roll back the quality and technology-based standards implemented under the Clean Water Act to protect Americans from discharges of toxic pollution into city sewer lines. For example, under the committee bill, dischargers would be allowed to trade pollution between water, air, and land—with so few restrictions that a paper recycling program could be used as an excuse to increase discharges of heavy metals into a delicate ecosystem. Additionally, opportunities to update and strengthen controls on toxic and other discharges would occur only once every decade, rather than every five years, as under current law.

The process of establishing water quality standards based on sound science will also be rolled back, supplanted by an approach based on undefined "economic and social considerations." Specifically, the bill requires EPA to be able to prove in court that the performance rules maximize social benefits.

In conclusion, by relaxing federal standards and deadlines, rather than creating flexibility in achieving them, the bill will increase the pressure on states to degrade or waive water quality standards.

NONPOINT SOURCE POLLUTION

Over half of the water pollution in America's lakes, rivers, and estuaries is the result of nonpoint source pollution. Since 1972, the federal government has provided cities over $60 billion to control point source pollution, but, less than $1 billion has been spent on nonpoint source pollution. Controlling nonpoint source pollution is the largest major hurdle to improving the quality of this nation's waters.

H.R. 961 simply does not provide the frame work for effectively addressing nonpoint source pollution.

THE REPEAL OF CZARA

Over the past five years, over 10,000 beaches in the United States have been closed because of coastal water pollution. Over one-third of all shellfish beds in the United States are closed or threatened by water pollution. The majority of coastal water quality impairment is the result of nonpoint sources of pollution. To focus greater resources and attention on this problem, Congress enacted the Coastal Zone Act Reauthorization Amendments (CZARA) in 1990. Since coastal areas are more densely populated than the nation as whole, and serve as critical ecosystems for many aquatic

and other species as well, these areas, which are downstream of all nonpoint source pollution, need extra protection.

H.R. 961 repeals CZARA in its entirety. While we recognize that aspects of CZARA need to be reviewed, the program, which serves 29 states, is critical to the protection and rejuvenation of coastal waters. The potential environmental and economic impacts of the repeal of CZARA would be significant: beach closing and advisories affecting the public that swims and eats fish and shellfish; closed or harvest-limited shellfish beds, and declining fisheries; and red tides and other harmful plankton blooms would impact individuals owning coastal property. Last but not least is the potential impact the repeal of CZARA could have on the quality drinking water.

WAYNE T. GILCHREST.
SHERWOOD BOEHLERT.

DISSENTING VIEWS

INTRODUCTION

The Clean Water Act is one of the most highly regarded environmental statutes on the books today. It has been achieving steady progress in cleaning up our Nation's waters since it was enacted in 1972, and it has achieved great benefits for the health of our people, for the liveability of our riverfront, lakefront, and coastal areas, and for the availability of the clean water so necessary for economic growth.

H.R. 961, the Clean Water Act Amendments of 1995, does not build on that success; in fact it does quite the opposite. There may be disagreement about how much farther we should go beyond existing law in creating new requirements to clean up our Nation's waters, but there is widespread agreement that we should not do less than we are doing today and we should not weaken existing standards for clean water.

Yet, that is exactly what this bill would do. Over and over again this bill rolls back the requirements of existing law, creates new loopholes for special interests, creates new opportunities for legal challenges to any effort to limit pollution of our waters, and makes enforcement of the few standards which remain very difficult. There is very little that the polluters and special interests asked for that they did not get in this bill. This is their dream come true. This is a polluter's bill of rights.

The average American would be far better off if this Congress passed on Clean Water bill than if it passed this bill. Without enactment of any bill in this Congress most of the existing Clean Water law would continue in effect, providing far greater protection to average Americans than the tattered and gutted Clean Water Act which would remain after enactment of this bill. This bill does not just amend the Clean Water Act, it largely undoes the Clean Water Act. That is not what Americans want and not what they voted for.

Of this bill the EPA Administrator says, "It exempts important sources of pollution, prohibits states from controlling certain discharges, and undermines good science. The bill creates loopholes aimed at lessening current requirements, making it difficult to enforce against even egregious polluters. The Clean Water Act is a highly workable and effective statute and this bill would roll back longstanding public health and environmental protections."

The Department of Justice says, "This bill would create exemptions and loopholes for polluters, making enforcement much more difficult."

The National Conference of State Legislatures says the bill " could undermine the states' progress in protecting water quality." The NCSL lists many provisions in the bill they oppose. Just to

give one example, it says, "Many newly-added provisions in Title III would undercut the states' ability to control toxic pollution from point sources. For example, there are new provisions that would slow down and weaken national effluent guidelines; allow increased discharges of toxic pollutants to sewage treatments plants; and allow permits for industrial dischargers that violate water quality standards. Other newly drafted sections in Title III would open the door to widespread relaxation of water quality standards for rivers, lakes, and coastal areas."

While considerable progress has been made since 1972 in cleaning up our Nation's waters, there is much that remains to be done. In the most recent assessment by the states of our Nation's waters they found that 40% of our Nation's waters still do not meet the water quality standards for the uses designated for each waterbody by the states. The existing Act would continue to make steady progress in dealing with those remaining water pollution problems. This bill would do the opposite.

At the very least we should do no less to clean up water pollution than we are doing today. This bill does not even pass that minimal test.

What we should be doing is retaining most of the existing Act, making a few modifications to strengthen the Act where there is a clearly demonstrated need to do so, and correcting a few specific problems which have arisen. The result would be a continuation of steady progress on cleaning up pollution. Instead, under this bill we would be weakening and rolling back major portions of the Act.

The most surprising area of rollback is in point source pollution. Point sources are the discharges by industries and sewage treatment works directly into rivers, lakes, or oceans. This is the area where the Act has been most successful and has contributed most to the cleanup of our Nation's waters. Little of H.R. 961 as introduced last February would have changed the point source standards. However, beginning in Subcommittee markup, the bill was drastically expanded and much of it now contains loopholes, waivers, and exemptions which seriously weaken the point source core of the Clean Water Act.

The bill expands from five to 70,000 the number of so-called nonconventional pollutants dischargers can seek waivers from having to treat to currently applicable standards.

If a discharger calls its treatment method "innovative" it can get a new waiver from existing standards, and even if it fails to meet the new lower standards, it can be excused entirely if it had "good faith."

If a discharger claims it is not polluting the air to the allowable limit under the Clean Air Act, it can pollute the water more than allowed today.

Industries which discharge into municipal sewage systems would have to do less treatment of their industrial waste before it was dumped into the municipal treatment works, where industrial toxins would somehow become less offensive by being diluted by enormous quantities of municipal sewage.

Would a discharger be part of a watershed plan? If so, there's a new waiver to get its discharge permit relaxed.

Secondary treatment, the floor level of treatment for municipalities, is waved for an unknown number of coastal cities and for thousands of smaller communities in general, without regard for what that might do in specific cases to water quality.

Would it be inconvenient to the discharger to comply with its discharge permit all year long? Would it be easier not to comply during the busiest months? No problem, this bill opens up for the first time the option of 12-month averaging, so you can be out of compliance during the months that it matters most, but average it out in the slack months.

Every one of the provisions just mentioned is a weakening of the existing Act. And not one of these provisions was in the introduced bill on which hearings were held. These provisions and a great many more like them, undermine the very feature of the Clean Water Act which has worked the best and which average Americans rely on to limit the amount of pollution dumped into our waters by major industries and by sewage treatment works.

The number of waivers, loopholes, and exemptions created by this bill for point source dischargers is so great that most dischargers should be able to find a provision they can use to discharge more pollution. As a result, average Americans are going to have to live with exposure to increased pollution, and in some cases are going to have to pay more for the sewage treatment in their own city because others are leaving the receiving waters much more polluted.

There are specific areas of the Act where there are problems of procedure or policy which need to be corrected in order to achieve clean water goals in a more practical, equitable, and efficient manner. Those problems can and should be fixed in ways which do not detract from our clean water goals. However this bill does not adopt that approach. Instead of fixing problems, it uses problems as excuses to cripple or eliminate existing cleanup programs.

For example, in the area of wetlands protection, there are specific problems which need to be addressed: a time limit on consideration of a permit needs to be set to deal with unreasonable delays; an administrative appeals process needs to be established so that those who cannot afford a full judicial challenge have a practical right of appeal; small and manmade wetlands, such as upland drainage ditches, small artificial lakes and ponds, wetlands created incidental to construction activity, and stormwater and sewage treatment ponds, need to be exempted from the program because they really are not the resource we are trying to protect; the role of states in the administration of the program needs to be enhanced; and we should clarify that in evaluating applications for development in wetlands the relative value of each wetland should be evaluated and taken into account.

Yet these reforms of the wetlands program were offered in Committee and were specifically rejected in favor of provisions which drastically reduce the protection afforded to wetlands and which would impose dramatic new costs on taxpayers.

Rather than exclude truly marginal and insignificant wetlands, this bill invents a new definition which by itself would eliminate over half of this Nation's wetlands from protection, including significant parts of the Everglades. (The Association of State Wetlands

Managers estimates that the definitional changes alone would remove 60–80% of all wetlands from protection.) Rather than requiring the relative value of each wetland to be judged when and if someone wants to develop it, the bill inexplicably would require the classification of all wetlands, whether anyone wants to devleop them or not. This provision alone is expected to cost over a billion dollars and take many years and about 1,000 additional employees to implement. Its sole purpose is to further reduce the amount of wetlands accorded any significant protection under this bill.

And of greatest concern to taxpayers is a very extreme takings provision, under which anyone who could claim that wetlands protection results in the loss of 20% of the value of any part of their property as compared to what it would be if they could develop it without any restrictions, could demand to be compensated by the taxpayers. Why the taxpayers should be punished for the perceived problems of the wetlands program is never explained, but the punishment would be severe: cost estimates for this provision range into the tens of billions of dollars.

There is no valid reason why reforming the wetlands program should result in substantially increased costs to the taxpayers. That is clearly not the solution to wetlands problems which most Americans want.

Another example is the stormwater program. Under existing law, cities over 100,000 have discharge permits which do not require specific levels of treatment (called numeric limits), but which simply require certain practices (called best management practices or BMPs), such as street sweeping or settlement ponds. However, interpretations of existing law have recently begun requiring stormwater permits to go to the numeric limits necessary to achieve water quality standards. No such technology is available in many instances, so clearly an adjustment should be made.

What should happen is that the stormwater program should be modified so that cities can go on using BMP's under their existing permits to move steadily closer to water quality goals, but they should not be under a legal requirements to treat stormwater to numeric limits.

Instead, this bill wipes our the existing permit program for municipalities entirely, ending all monitoring and all enforceable requirements. The bill claims to deal with these issues under the nonpoint program, but that program has been notoriously ineffective and unenforceable. Furthermore, the bill eliminates the stormwater permit program not only with respect to municipalities, but also with respect to industrial sites. This would end enforceable standards for industries which leave piles of chemical stocks out in the open, subject to runoff into the nearest stream.

There is a valid reason why stormwater permits, should not move to numeric limitations, but there is no reason why municipalities and industries cannot continue doing what they are doing today to control stormwater pollution. Once again this bill has opted for rolling back cleanup which is happening today.

The advocates of this bill say they do not want to harm the environment, they just want to give state and local governments more flexibility. And where it is to the advantage of the polluter to give state and local governments more flexibility, they do so. but where

it is to the advantage of the polluters to give less flexibility, that is what the bill does.

For example, in the new provisions creating more lax standards for discharge by industry into municipal sewage systems, states would have only limited say in the matter. If the conditions in this bill for a pretreatment waiver were met, the states could not stop the waiver from being granted. When it is for the benefit of the polluter, Washington still knows best.

Another example is in the area of nonpoint (runoff) pollution, which is now the greatest cause of water pollution in the United States. The bill grants broad and vague exemptions to agriculture (the largest source of nonpoint pollution), which a state could not override even if it felt it needed to do so in order to deal with its water pollution problems. Again, when it is in the polluter's interest. Washington still knows best.

The bill repeals the nonpoint program of the Coastal Zone Management Act (CZMA), even though the coastal states did not want it repealed and specifically asked that it be retained. But unlike the nonpoint programs elsewhere, the CZMA nonpoint program actually holds promise of achieving improvements (albeit modest) in reducing nonpoint pollution. Again, where it is the interest of the polluters, against the idea of greater state role and flexibility, the polluters won out.

The stormwater provisions are another example: the provisions in the bill which weaken control of municipal stormwater pollution, and virtually eliminate any meaningful control of industrial stormwater pollution control, are federally mandated and the states cannot choose otherwise. State and local government are pushed aside on the question of relaxing these stormwater controls; the rollback would be in federal statute and no one else would have a say in the matter.

The advocates of this bill say they do not want to harm the environment, they just want to assure that "good science" is used before regulatory decisions are made. This is their rationale, for example, in including risk assessment provisions even more extreme and onerous that those contained in the House-passed risk assessment bill. But when it would be to the disadvantage of the polluter to require "good science," then science is tossed aside.

For example, at Congress' direction, the National Academy of Sciences has been working for over two years on a study of how wetlands should be defined. That study is expected this month. Yet here we are using to the floor with a bill which drastically redefines wetlands so as to exclude the majority of all wetlands nationwide, immediately before having this "good science" on the very question we are deciding Clearly here the advocates of this bill do not thing "good science" is going to agree with them.

Another example is the new provisions effectively allowing water quality standards to be lowered even when "good science" says they should not be. At present, it is up to the states to select the designated use for each waterbody, such as swimmable, or navigation, or whatever. Having selected that designated use, science determines what water quality standards are necessary to achieve that designated use, for example, how clean water must be for it to be swimmable without being a health hazards. That is a scientific

question: either the medical evidence is that a given body of water is safe to swim in, or it is not. Under this bill, we would effectively adjust the water quality standards downward to accommodate cost concerns, so that we could still call a body of water swimmable even though medical evidence established that it was no. Existing law takes costs into account in other ways; we should not be disregarding the science and calling something swimmable which is not.

The advocates of this bill say they do not want to harm the environment, they just want to make sure that costs and benefits are properly balanced in making decisions setting environmental standards. Again this is the rationale for the extreme risk assessment provisions in the bill. Where it is to the advantage of the polluter, this bill requires extensive and difficult benefit-cost analysis and risk assessment.

But many of the most significant regulatory decisions to be made under this bill are the granting of the countless new kinds of waivers created by the bill. In the aggregate these waiver decisions will be the most far-reaching impacts of this bill. Certainly if we believe that we should thoroughly understand the costs, benefits, and risks associated with major regulatory decisions, these waiver decisions should be subject to the same benefit-cost and risk analyses as other regulatory decisions would be under this bill. But they are not. Under the bill the kinds of regulatory decisions likely to control pollution could not go ahead without these extensive and burdensome analyses, but the kinds of regulatory decisions which are likely to benefit polluters, such as waivers, and degrade the environment are not required to have any of these new analyses.

Furthermore, perhaps the most basic benefit-cost issue in the Act is the fact that we are requiring higher and higher cost efforts by point dischargers precisely because we are unwilling to require those same pollutants to be removed at far lower cost by nonpoint sources. Yet this bill, rather than taking the most cost-effective option of requiring nonpoint sources to do at least modestly more pollution reduction, takes the opposite course of requiring nonpoint to do less than it does today. The result is that the task of cleaning up our Nation's waters will become less cost-effective under this bill, rather than more cost-effective. But the advantage of nonpoint polluters will have been served.

The advocates of this bill say they do not want to harm the environment, they just want to defend private property rights. And where it is to the advantage of polluters they include extreme private property provisions. But this bill would fundamentally harm the private property rights of those whose property will be subject to increased flooding because others have chosen to destroy wetlands, of those whose private property derives its value from fish stocks or wildlife or recreational opportunities made possible by wetlands, and of those whose private property can be enjoyed or developed only if clean water has not been polluted by those upstream. Where it is to the advantage of the polluter, this bill is aggressive in its defense of property rights, but where concern over the property of the rest of us is concerned, our property rights would take a back seat to the right this bill holds in highest esteem, and that is the right pollute.

The rollbacks, waivers, exemptions, and repeals of existing law make this bill absolutely unacceptable. The bill at every turn advantages the major polluters and disadvantages the rest of us. It is an extreme bill in a country which wants reasonable and cost-effective efforts to clean up our Nation's waters and to bequeath them to our children. It would take major modifications for this bill to become acceptable. If that can be accomplished, then we should move forward. But if it cannot, then we would all be far better off passing no bill and continuing to operate under the existing Clean Water Act.

THE BILL DRAMATICALLY ROLLS BACK POINT SOURCE STANDARDS

Background

The widely acknowledged successes of the Clean Water Act over the past 20 years are attributable to the Act's control of pollutant discharges from so-called "point sources." Point sources are confined and discrete conveyances such as pipes, ditches and channels used by industry and municipalities to discharge their polluted wastewater into our Nation's lakes, rivers, streams and the ocean. The backbone of the point source control program is the National Pollutant Discharge Elimination System (NPDES) program established under Section 402 of the Act.

The Act (at section 301) prohibits any point source discharges, unless authorized in an NPDES permit. These permits contain effluent limitations that specify the types and amounts of pollutants that may be discharged. The limitations are derived from two types of standards: technology-based and water quality-based. Technology-based standards are based on what can be accomplished using technologies available and economically achievable for a particular industry. While technology-based standards for each industry group are nationally applicable (unless one of the limited available waivers or variances is granted), the discharger has the flexibility to select the technology it will use to meet these standards.

Sometimes technology-based standards are not adequate to achieve State water quality standards. In these instances, water quality-based standards are adopted. Water quality-based standards are based on the capacity of the receiving water to accommodate pollutants, which in turn depends on the use of the receiving water as determined by the State. Hence, a waterbody that is used for swimming and drinking water supply will have higher standards than will one with which humans do not have direct contact.

One of the Clean Water Act's feature that has been credited for the success of the point source pollution control program is its establishment of uniform minimum standards for similarly situated dischargers. Such national baselines serve several important functions.

First, they provide a level playing field. They protect against states and cities having to choose between protecting water quality and losing business and jobs to competitors in states which roll back water quality protection to attract industry.

Second, national baselines protect residents who live downstream, as does most of the population, from dumping of toxics by their upstream neighbors who, because they do not live with the

impact of their own discharges, might be tempted to pollute with impunity. It is well known that the adverse impacts of polluted water known no political boundaries. National baselines ensure that residents of one community do not have to worry about contamination of their drinking water supply, swimming beach and favorite fishing spot by upstream discharges of sewage and industrial wastewater.

Third, national baselines provide a degree of predictability and simplicity in implementation. They allow the regulated community to know what is expected of them under the law and to make planning decisions accordingly. They allow the regulator, usually the State, to implement the Clean Water Act without exhausting its resources on complex, resource-intensive scientific judgements such as those required under many of the waiver provisions in H.R. 961. The demanding and often impossible judgements the agencies are called on in H.R. 961 to make on a facility by facility basis will divert the agencies' resources from moving forward with an effective statewide program.

H.R. 961's waiver provisions generally

Through creation of dozens of waivers and exemptions. H.R. 961 would eliminate fundamental provisions of the Clean Water Act that establish uniform baselines that have resulted in the significant gains of the Clean Water Act over the past 20 years.

The bill would introduce vague, unworkable and inconsistent new standards that create uncertainty and confusion; exhaust local, State and federal governmental resources; lead to spiraling litigation; and, most significantly, devastate our Nation's waters and the people that depend on them for employment, recreation and sustenance. As stated by the Acting Assistant Attorney General for the United States Department of Justice's Office of Legislative Affairs, "the bill would create exemptions and loopholes for polluters, making enforcement much more difficult" (letter dated March 29, 1995, from Mr. Kent Markus to Chairman Shuster). The National Conference of State Legislators reached a similar conclusion: "Many newly-added provisions in Title III would undercut the states' ability to control toxic pollution from point sources. For example, there are new provisions that would slow down and weaken national effluent guidelines; allow increased discharges of toxic pollutants to sewage treatment plants and allow permits for industrial dischargers that violate water quality standards * * *" (letter dated March 30, 1995, from Mr. Patrick Dougherty, Chair, NCSL Environment Committee, to Chairman Shuster).

The bill contains a myriad of industry-specific waivers which both expand currently available waivers and create new loopholes in the Act's point source standards. For example, there are one or more specific waivers available to each of the following industries: mining, pulp and paper, iron and steel, photo processing, food processing, electric power, cattle, oil and gas and others. In addition, a select group of municipalities, including San Diego and Los Angeles, would become eligible for new or expanded waivers of standards for treating the wastewater from their sewage treatment plants.

The bill also would create generally applicable loopholes, such as the provision that a discharger is deemed in compliance if it complies with its technology based standard a certain percentage of the time; the one that allows for permits that will not meet water quality standards if a watershed plan has been written; and the entitlement to intake credits in a wide variety of circumstances.

Responses to suggested rationales for the multiple waivers

The nagging question is: WHY? Has enough already been done to protect water quality? Do Americans want reductions in water quality? The answer to both of these questions is a resounding: NO.

Notwithstanding the frequent observation that "the Clean Water Act is the most successful Federal environmental law," a lot remains to be done to maintain the progress that has already been made, and to address remaining water quality problems. Although the point source program has resulted in enormous strides in cleaning up our Nation's waters, 40% of our Nation's waters still do not meet State designated water quality standards. That means that our waters are not yet clean enough. Our successes do not warrant the waivers in this bill, unless we are prepared to say, and hear said, that "the Clean Water Act was the most successful Federal environmental law—until 1995, when it was dismantled by Congress." Unfortunately, H.R. 961 seems to be based on the premise that we have gone too far in cleaning up our Nation's waters, that the goals of the Clean Water Act's point source control program have already been achieved. Not only would the bill prevent further progress, it would return us to the days before the gains we today enjoy—even take for granted—had been achieved.

It is equally clear that Americans do not want to roll back environmental laws that are responsible for the water quality and quality of life that we have come to expect. In a report issued this month entitled "Setting Priorities, Getting Results: A New Direction for the Environmental Protection Agency," the National Academy of Public Administration cited as an "enduring principle" that "the American people overwhelmingly desire a healthier environment and increasingly see it as critical to the nation's future" (Summary Report at p. 4). The Academy also noted that "EPA has greatly enhanced the quality of life in America * * * [such that] most Americans now take a relatively clean environment for granted" (Summary Report at pp. 7 and 9).

Many of the waivers and variances created under the bill have been promoted in the name of increasing flexibility and reducing burdens. We fully agree that enhancing flexibility and reducing regulatory and financial burdens, both for State and local governments and for the regulated community, are laudable goals. But, there are ways to increase flexibility and reduce burdens that do not have the serious adverse consequences of this bill which, in many instances, do not reduce but actually increase burdens on State and local governments.

It has been argued that the waiver provisions will not cause a setback in water quality because waivers are not available unless authorized by a State or EPA. Unfortunately, under the bill's provisions agency approval is often an illusory safeguard.

First, in several instances, the waiver is automatic or a State or EPA is required to grant the waiver if certain conditions are met, and the conditions do not necessarily focus upon water quality, but rather on taking certain actions. The result is waivers based not upon good judgment founded in science, but upon behavior. The bill thereby limits the States' and EPA's authority to exercise discretion in determining whether a waiver is appropriate in a particular situation.

Examples of the mandatory nature of certain waivers are: coal remining operations ("Any operator of a coal mining operation * * * shall be deemed to be in compliance with sections 301, 302, 306, 307, and 402 of this Act if * * *") (Sec. 301(d) of the bill, amending Section 301(p) of the Act); coastal discharges ("any municipal wastewater treatment facility shall be deemed the equivalent of a secondary treatment facility if * * *") (Section 309(a) of the bill, amending Section 304(d) of the Act); modification of secondary treatment requirements ("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) * * * if * * *") (Section 309(b) of the bill, amending Section 301(s) of the Act); waiver of industrial categorical pretreatment standards ("the approved pretreatment program shall be modified to allow the publicly owned treatment works to apply local limits in lieu of categorical pretreatment standards [if] * * *") (Section 311 of the bill, amending Section 307(f) of the Act).

Second, this rationale ignores the fact that the uniform minimum standards that are the foundation of the current point source program are the cornerstone of the Act's success. As the National Academy of Public Administration concluded, "EPA has a role in setting and enforcing national standards or ensuring that States and local governments enforce them, thus preventing polluters from externalizing their pollution costs and creating a renewed 'race to the bottom'" (Summary Report at pp. 14–15).

Third, even where the granting of a waiver is discretionary with a State or EPA, frequently the standards created by the bill for granting a waiver are extremely resource intensive of not impossible to implement.

The bill offers little or no guidance on how the dozens of new, often vague and ambiguous, standards are to be implemented. Nor does it direct EPA to develop any guidance that would provide some degree of consistency in interpretation and application. Adoption of complex tests, coupled with significant limitations on discretion in how they might be applied, creates an impossible situation for State and Federal agencies attempting to follow them, and exponentially increases delays, up from burdens and later litigation in permit appeals. Each State that runs its own Clear Water Act permitting program will be required to expend additional resources to develop, and defend against challenges to, every permit. The increased resources demanded of State and Federal agencies, coupled with the limitations on their exercise of discretion, set them up for a losing situation, which then adds fuel to Congress' criticism of the agencies' performance.

As stated by Mr. Robert Perciasepe, EPA Assistant Administrator for Water, "Across the board, lengthy litigation over newly

crafted but fundamental provisions may put off basic protections. The administrative burden of making tens of thousands of new, cases by case determinations may overwhelm available Federal and State resources, leading to backlogs, frustration and delay or hasty and perhaps bad decisions" (Letter to Chairman Shuster dated April 4, 1995).

In addition, without explanation and inconsistent with other provisions of the Act, the bill repeatedly creates a dual standard for granting waivers, depending on whether EPA or a State is responsible for implementing the Clean Water Act in a particular State. For example, under several provisions, where a State that has not been authorized to implement the Clean Water program, the Administrator may act on a waiver application only with the concurrence of the State. However, an authorized State is not required to seek the concurrence of, or in many instances even to consult with, the Administrator before granting a waiver. Similarly, some provisions provide that under given circumstances EPA shall and a State may grant a waiver (see, for example, Sec. 406 of the bill regarding intake credits).

Some of the bill's waiver provisions are couched in terms that may sound environmentally responsible, such as "pollution prevention," "innovative technologies," "pollution reduction agreements" and "watershed management." But, behind the section headings are some sweeping waivers that will do anything but prevent pollution. Rather, these sections contain perverse incentives for polluters to take advantage of liberally available loopholes to maximize profit at the expense of the quality of the Nation's water and the everyday life of the people in this Country.

Many of the waiver provision also fail to take into consideration the cumulative impact of waivers to multiple sources, instead treating each discharger as if in a vacuum.

Risk assessments are not allowed, much less required, before standards may be waived. This includes standards for toxic and other bioaccumulative and persistent pollutants that are known to threaten human health. While the bill calls for an elaborate form of risk assessment, more onerous than that recently passed by the House, it applies risk assessment only to regulatory activities likely to impose requirements on polluters. On regulatory decisions likely to be to the advantage of polluters, however, such as the many new waivers allowed by this bill, the bill does not apply risk assessment, so that these decisions can be made with greater speed and less analysis of their consequences. This is not an oversight. The subcommittee and full committee rejected amendments that would have subjected waivers to risk assessment.

In addition, the waivers have potentially significant impacts on other industrial and municipal dischargers and on nonpoint sources of pollution. Any increase in discharges by one source will need to be offset by reducing the discharges by another source, if water quality standards are to be met. Those industries and municipalities that were effective in securing specific waivers in the bill will have a competitive advantage over other industries, municipalities and other dischargers, or else our water quality will deteriorate. In the guise of increased flexibility, the bill creates loopholes that create a very unlevel playing field.

The vast majority of the point source waivers in the bill were never addressed in testimony during any of the seven Clean Water Act hearings during the 104th Congress before the Water Resources and Environment Subcommittee, and were developed behind closed doors. Thus, whatever conceivable justification there may be for the waivers remains elusive to most of us. Their short term and long term impacts have never been openly examined. We do know, however, that whatever their impacts, they will be compounded by the fact that the bill doubles the term of most permits from 5 to 10 years. So, we would be living with the impacts of this unravelling of the Clean Water Act well into the next century.

Examples of point source waivers in H.R. 961

A more detailed discussion of some of the specific point source waiver provisions follows:

1. Modifications of Effluent Limitations for Nonconventional Pollutants: Section 301(b) of the bill, which amends Section 301(g) of the Act, expands from five to more than 70,000 the number of pollutants that would be eligible for waivers of the applicable technology-based standard of best available technology economically achievable ("BAT").

Current law lists five nonconventional pollutants for which a discharger may seek a modification of the BAT standard (ammonia, chlorine, color, iron and total phenols). These five pollutants were identified in the Act based on a determination that there was sufficient information to warrant making them eligible for consideration for waivers.

Under current law, for waivers to be granted for any additional nonconventional pollutants, they must undergo a two-step approval process. First, for a nonconventional pollutant to be eligible, it has to be added to the list, based on a demonstration to the Administrator that, among other things, the pollutant is not a toxic pollutant. A nonconventional pollutant that is approved for the list may be considered for a waiver, based on the required showing by the applicant. Petitions for listing must be filed within 270 days after promulgation of an effluent guideline for a particular nonconventional pollutant.

The bill would dramatically enlarge the number and type of pollutants for which waivers may be sought. The bill eliminates the prerequisite that an applicant demonstrate that the pollutant for which the modification of the BAT standard is sought is not a toxic pollutant. This is problematic because many of the approximately 70,000 so-called "nonconventional" pollutants would meet the criterion for toxic pollutants under Section 307(a) if EPA were to carry out the procedure for formally listing additional toxic pollutants. The term "nonconventional" includes any pollutant other than the five conventional pollutants and 126 toxic pollutants designated under the Act. Since EPA has been slow to add to the list of 126 toxic pollutants under Section 307 of the Act, many toxic pollutants are currently in the enormous catchall category of "nonconventional" pollutants. Nonconventional does not mean nontoxic. This bill would expand the waiver of BAT standards, which currently is available only for nonconventional pollutants, to cer-

tain toxic pollutants, including pollutants that may be highly persistent and bioaccumulative. The 70,000 pollutants that would become eligible include most of the chemicals referred to as dioxins, and all of the chlorinated dibenzo-furans.

The fact that State water quality standards would still apply does not mitigate the potential adverse impacts of this provision, since states have standards for only a small fraction of the tens of thousands of pollutants that would be eligible for waivers under H.R. 961.

In addition, the bill would eliminate the deadline for applying for a waiver. Hence, dischargers of approximately 70,000 nonconventional pollutants, including some toxic pollutants, could at any time drown EPA with applications for modifications.

As with most of the waiver provisions in the bill, this waiver was never raised in hearings before the Water Resources and Environment Subcommittee. The creation of this potentially sweeping modification of applicable baseline standards for nonconventional pollutants was achieved without any disclosure of any justification for the amendment.

2. Waivers Under the Guise of "Pollution Prevention Opportunities".

a. Waivers for "Innovative Production Processes": We strongly support the concept of improving provisions on innovative technologies in order to provide greater incentives for development of innovative production and pollution control processes, and, in appropriate circumstances, protecting those who take advantage of the incentives from liability if their innovations fail. We also agree with the bill's increase from two to three years of the extension for meeting applicable standards under this provision.

However, Section 302 (a) and (f) of the bill, which amends Sections 301(k) and 307 of the Clean Water Act, raises several serious concerns.

First, the provision creates new standards that reduce the likelihood that so-called "innovative" measures taken under these provisions actually will succeed in developing innovative approaches to meeting water quality requirements. The new standards also increase the potential for abuse by those who view this provision as an opportunity to extract a three-year extension of deadlines for meeting applicable standards.

For example, under current law, proposals must have a "substantial likelihood" of achieving an effluent reduction that is "significantly greater" than otherwise required, and must have the potential for industry-wide application. Under the bill, the innovative method must only have the "potential" to achieve an effluent reduction that is "greater," by some unspecified amount, than otherwise required, and there is no requirement that the technology have any application beyond the facility that developed it. A barely perceptible reduction in the effluent would meet the new standard, and allow a three-year extension from meeting applicable standards.

Second, the bill liberally excuses violations of more lenient interim standards applicable pending expiration of the extension. The bill requires a reduction in or elimination of any penalty if the permittee has made good faith efforts to implement the innovation and to comply with any interim limitations. Although it is appropriate

to provide some protection against liability if an effort at innovation under this provision fails, the bill goes too far in compromising the requirement to comply with the weaker interim limits established to reflect the permittee's capability pending completion of the innovation. For penalties to be forgiven, the permittee merely has to meet the subjective "good faith" test, regardless of how inadequate its practices are.

Forgiveness of even interim limits is especially problematic in the context of indirect dischargers to publicly owned treatment works ("POTWs"). There, the interim standards are necessary to prevent interference with the operation of the POTW, and discharges that will pass through the POTW. By excusing the requirement to meet even these interim standards, the bill would increase the burden on the POTW and municipal ratepayer, in order to provide an inappropriately high degree of protection for the industrial discharger.

b. Waivers for Pollution Prevention Programs: Section 302(b) of the bill, adding Section 301(q) to the Act, turns a highly promising concept into a dangerously broad loophole. We enthusiastically endorse inclusion of pollution prevention planning in the Clean Water program, and commend the many companies that already have developed and implemented successful pollution prevention programs.

Unfortunately, through the creation of vague and unworkable standards and the oversimplification of an enormously complex endeavor, the bill creates another substantial loophole without ensuring that the return will even approximate the potential damage.

The provision allows waivers of virtually all standards under the Act, including technology-based standards (best conventional technology ("BCT"), best practicable technology ("BPT"), BAT and secondary) and water quality-based standards, including standards for toxic pollutants and for pretreatment by industrial dischargers into POTWs. The prerequisite for obtaining a waiver under this provision is that so-called pollution prevention measures or practices will "achieve an overall reduction in emissions to the environment (including emissions to water and air and disposal of solid wastes) from the facility * * * that is greater than would otherwise be achievable * * * and will result in an overall net benefit to the environment."

The determinations required under this provision are, at best, enormously complex. For example, how would a permit writer determine whether an increase in discharges of PCBs to a lake coupled with a reduction in discharges to the air of sulfur dioxide at a facility will result in an overall reduction in emissions and net benefit to the environment? Application of these standards, if possible at all, would require sophisticated modeling and speculation. Notwithstanding, conspicuously absent from the bill is any provision directing EPA to issue guidance or regulations on how state and federal permit writers are to make complex multimedia tradeoff determinations required by this section. By omitting any federal guidance, the bill sacrifices any possibility of consistency and equity in implementation.

Notwithstanding the high stakes, since this provision would allow discharges that violate all current standards in the Act in exchange for some unspecified benefit to the air or other environ-

mental media, each State and federal employee will be left on his or her own in interpreting the provision without any guidance from Congress or EPA. Implementation of this provision will strain the resources of the State and federal environmental agencies and relax Clean Water standards. Benefits, if any, will not necessarily be to water quality—rather, they will be at the expense of water quality.

c. Waivers for Pollution Reduction Agreements: This is the first of two provisions in the bill concerning pollutant trading. The other, which establishes a pilot program under principles that are not entirely consistent with this provision, are in the section of the bill on watershed management (Section 321(a), discussed below).

Section 302(c) of the bill, adding Section 301(r) to the Act, authorizes the issuance by States and EPA of permits that do not meet applicable standards if the owner or operator of a facility (point source discharger or nonpoint source) enters into a "binding contractual agreement" with another source "in the same watershed" to "implement pollution reduction controls or measures beyond those otherwise required by law * * *," and the State or EPA 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 * * * resulting in a net benefit to the watershed."

This provision suffers from many of the same shortfalls as the pollution prevention provision addressed above. It is another example of a very promising concept that has not been adequately developed into a workable program that will benefit, or at a minimum not impair, water quality.

The only criterion for trading agreements is that they 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 * * * resulting in a net benefit to the environment." There is no definition of what constitutes a "net benefit to the environment." There are no guidelines as to the elements of an acceptable trading agreement, and no provision for EPA's issuance of regulations or guidance on how a State or federal employee might make these sophisticated determinations.

Trading is authorized for the purpose of implementing "pollution reduction controls or measures beyond those otherwise required by law * * *." But there is no requirement that the added reduction be beyond a de minimis amount and, again, no guidance on how this measurement might be made.

The bill gives a carte blanche for modifications under this provision—modifications are available for any "otherwise applicable requirements." There is no backstop that, for example, discharges meet, at a minimum, technology-based limits.

Similarly, the provision does not limit in any way the type of pollutants that may be traded. It leaves open the possibility of trades between highly toxic pollutants and conventional pollutants. In addition, the provision allows trading between dischargers in the same watershed, notwithstanding that some watersheds are thou-

sands of square miles and include hundreds of different waterbodies. Trades could result in the creation of toxic hot spots at one outfall if the discharges at the facility of the other party to the agreement result in an overall reduction in discharges. And, as with the other waivers, this one is immune from risk assessment.

It is not clear that the trading agreements would be enforceable in federal court, and in certain instances they clearly will not be. The agreements are required to be embodied in "binding contractual agreements" and in modifications to NPDES permits. In the event that an NPDES permit's effluent limitations are relaxed under an agreement by a nonpoint source to reduce discharges, and the nonpoint source fails to hold up its end of the bargain, it appears that absent enforceable nonpoint source requirements, which are not required, the state and federal government would have no recourse to ensure that overall discharges are no greater than would have been allowed absent the trading agreement.

These concerns regarding the provision are compounded by the fact that the expanded ten year permit terms may be further lengthened under the watershed planning provisions.

The bill imposes on EPA the obligation to report to Congress within three years on the discharge reductions achieved as a result of modifications made under pollution reduction agreements. However, the bill has no provision for parties to an agreement to conduct monitoring or provide EPA analyses of the impacts of their agreements.

Mr. Robert Perciasepe, EPA's Assistant Administrator for Water, summarized the Agency's reaction to this provision as follows: "Administrator Browner and I fully support preventing pollution and exploring ways to increase pollution trading, but I believe the provisions at Section 302(b) in H.R. 961 are not good policy for a number of reasons. Progress to date on methods for assessing and comparing pollution generated and energy used during a product's life cycle shows that judgments about pollutant trade-offs can be very complicated. H.R. 961 would allow discharges that exceed State water quality standards and deviate from EPA's technology-based standards on the basis of site-by-site decisions regarding transfers of pollutants between air, water and landfills, energy use and other factors, with no guidance or methodology to establish even the slightest consistency among States."

d. Waiver of Antibacksliding Requirements: Section 302(d) of the bill, amending Section 402(o)(2) of the Act, creates broad new exemptions from the antibacksliding requirements of the Act. Under current law, new permits generally must be as strict as existing permits. This requirement helps ensure that water quality will not become worse.

The bill makes clear that backsliding from a permit's effluent limitations is allowed through waivers under new Sections 301(q) (relating to pollution prevention) and 301(r) (relating to so-called "pollution reduction agreements"). Hence, new permits issued for ten year terms can be weaker than current permits if, for example, there are unquantified reductions in air pollution in the same watershed.

In addition, the bill creates a new vague catchall authorization for backsliding, where a discharger is "taking pollution prevention

or water conservation measures that produce a net environmental benefit." As in other places in the bill, there is no guidance on how a permit writer might calculate the circumstances where the "net environmental benefit" standard will be met.

Backsliding is allowed by the bill in a variety of circumstances, including where a discharger is taking measures that "increase the concentration of a pollutant while decreasing the discharge flow; or increase the discharge of a pollutant * * * 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." Both of these scenarios potentially impair water quality. Increases in concentration of certain toxic pollutants can cause acute impacts even if the overall mass of the pollutant is reduced. In addition, recognition of offsets between different outfalls at a facility often is not appropriate. For example, some facilities are miles long with multiple outfalls. An increase in discharges from one outfall can be devastating to water quality in the vicinity of that outfall, devastation that will not be offset by reductions in discharges a mile or more away.

e. Waiver of Antidegradation Review Requirements: Regulations under the Clean Water Act currently require states to adopt policies and methods to prevent degradation of high quality waters. Section 302(e) of the bill, amending Section 303(d) of the Act, prevents EPA from requiring a State to conduct antidegradation review in various circumstances, including where increases in a discharge are authorized under various waivers addressed above (such as Section 301(g) (waiver of standards for nonconventional pollutants), 301(k) (innovative technologies), 301(q) (pollution prevention) and 301(r) (pollutant trading agreements)). The provision also precludes a federal requirement for antidegradation review where the concentration of any pollutant in a discharge is increased, if the increase in concentration is caused by a reduction in flow, and where an increase in discharge from one outfall at a facility of any size is offset by a decrease in the discharge of a pollutant from another outfall at the facility.

This provision raises concerns similar to those addressed in the discussion of the antibacksliding provision. In addition, this provision discourages any evaluation of the impacts of the bill's rollbacks in water quality protection.

3. Waivers of Categorical Pretreatment Standards: Section 311 of the bill, which amends Section 307 of the Act, allows for waivers of national categorical pretreatment standards by industries that discharge their wastewater to municipal sewage treatment plants instead of directly to waterbodies.

The bill identifies as the purpose for awarding waivers the avoidance of "redundant or unnecessary treatment" that has "little or no environmental benefit," and the reduction of certain alleged administrative burdens. These criteria are unclear and promise to be resource intensive for the municipal, state and federal agencies responsible for applying them. For example, the meaning of the concept "unnecessary treatment" which has "little environmental benefit" is unclear, since the necessity of treatment depends on the goal that one is striving to attain. The replacement of categorical standards with some unspecified local standards for which the bill has

no minimum standard virtually eliminates any meaningful goal, making circular the differmination of whether treatment is "necessary" and will have more than a "little environmental benefit."

We support the avoidance of redundant or unnecessary treatment and any corresponding waste of resources. Our concern is that the provision, as currently drafted, has implications far beyond any reduction of redundancy or of any administrative or other burden. specifically, the waiver provision threatens to adversely impact the operation of municipal sewage treatment plants, increase to municipal ratepayers, and increase discharge of industrial pollutants to the environment.

The provision requires EPA or the State to grant a POTW's request to modify its pretreatment program to allow the POTW to apply local limits in lieu of categorical pretreatment standards, if four specified conditions are met, relating to the POTW maintaining compliance with its NPDES permit. State requirements, and requirements relating to air emissions and biosolids. The bill requires that the POTW demonstrate that it is "likely" to remain in compliance with its permit and other specified requirements. It is unclear how this demonstration may be made.

Moreover, even if the POTW does continue to meet its standards, there is no assurance that the POTW is not discharging untreated industrial toxic pollutants. POTWs are not designed to treat, and generally do not have limits for and are not required to monitor for, the sometimes numerous different nonconventional and toxic pollutants introduced by industrial users. The bill fails to guard against the discharge of industrial pollutants that are not susceptible to conventional treatment for domestic waste and therefore pass through the POTW. The provision seems to suggest that if you simply dilute toxic and industrial waste with enough domestic sewage, it is no longer harmful.

The impact of waiving categorical pretreatment standards will be felt most severely in communities with combined sewer overflows ("CSO") and sanitary sewer overflows ("SSO"). Adoption of local pretreatment standards in lieu of more stringent categorical pretreatment standards guarantees that each time there is a CSO or SSO, there will be less pretreatment at the factory than currently required, resulting in increased amounts and concentrations of industrial waste being discharged with absolutely no treatment by the POTW. In the best case scenario, this toxic and other industrial waste will be discharged directly to a waterbody. Under other conceivable and, in some localities, likely scenarios, the toxics and other industrial waste will end up in the basements of residents' homes, in playgrounds, and along the streets. EPA has expressed concern about such a scenario. In his April 4, 1995 letter to Chairman Shuster, EPA's Assistant Administrator for Water cautioned that "[w]ithout national pretreatment standards, EPA's widely praised, flexible policy on addressing combined sewer overflows may need to be revised to incorporate new provisions for toxic pollutant discharges."

Also of concern is that this provision invites competition between municipalities for industry. Whichever municipality can offer the best deal as far as the cost of wastewater pretreatment required of an industrial discharger, the more likely it is to attract business

and jobs. This provision would eliminate the baseline federal standards that are intended to provide protections for all people regardless of which community they live in, and regardless of whether they live downstream from a municipality that elects to adopt loose standards in order to attract industry.

Furthermore, even if an annual review reveals that the POTW cannot meet its requirements while applying local pretreatment limits, then the industrial discharger is entitled to "a reasonable period of time" (not to exceed two years) to come into compliance with the categorical pretreatment limits. The outside limit of two years and the "reasonable period of time" standard are unduly lax, in view of the fact that the categorical standards that would be imposed are ones that the industrial discharger was required to have been meeting prior to receiving the waiver under this provision. If an industrial user's discharges pursuant to local limits are causing violations by the POTW, impairment to water quality or to the ability of the POTW to effectively operate, or increases in costs to ratepayers, there is no justification for allowing it to drag its feet—in simply turning back on treatment systems that have already been installed—to meet the nationally applicable standards.

Interactions between this provision and others in the bill also must be considered. For example, the bill fails to include safeguards against abuse of this provision by privately owned for-profit treatment works that treat primarily industrial waste. Under the bill's definition of a publicly owned treatment works in Section 504 of the bill (amending Section 502(27) of the Act), a private owner of a for-profit treatment works may take advantage of the waiver of categorical pretreatment standards. If the privately owned treatment works is designed and constructed "principally" to treat a "mixture" of some unspecified combination of "domestic sewage and industrial wastes," it may take advantage of the waiver of categorical pretreatment standards. Without safeguards, this lends itself to abuse by privately owned treatment plants seeking to increase their profit margins.

Finally, this provision threatens to shift from industry to residential ratepayer the costs of treating industrial waste, and to increase burdens on municipalities with responsibility for implementing the provision.

4. Waivers for Watershed Management Plans.

a. Waivers Under Pollutant Transfer Pilot Projects: Section 321(a) of the bill adds a new Section 321(g) to the Act, which establishes a program for pollutant transfer pilot projects. Under the provision, a point source discharger, or a source of nonpoint pollution, may seek approval to increase its discharges of a pollutant "by entering into arrangements, including the payments of funds," for another discharger or source to take measures or implement controls on its own pollution through a pollution reduction credits trading program.

This provision drastically oversimplifies a highly complex concept which holds promise, but is just at its inception. Moreover, the provision is void of guidelines or meaningful limitations and does not direct EPA or the States to develop criteria for approval of projects. The absence of meaningful criteria or control minimizes the likeli-

hood of a successful pilot project or of the ability to generalize any results or lessons learned to other sources.

The only criterion for approval is that a request include "appropriate safeguards * * * to ensure compliance with technology based controls and to protect the quality of receiving waters."

This vague criterion falls short of requiring the transfer of responsibility for reducing pollution contribute to the attainment of water quality standards. The bill does not elaborate on what may be "appropriate" safeguards or on what constitutes "protection" of water quality. There is no requirement that the reduction in pollution by the discharger who agrees to take measures or implement controls with respect to its own pollution is at least sufficient to offset the discharge by the other source, or beyond what would otherwise be required. Nor is there any requirement that the pollutants discharged by the two parties to the agreement be similar in toxicity or impacts on the environment, or that the discharges be in the same vicinity.

b. Waivers of Water Quality Standards as an Incentive for Watershed Management: Section 321(b) of the bill, which adds Section 402(r) to the Act, authorizes the issuance of permits that do not meet water quality standards. The conditions for issuing such a permit are inadequate to ensure that water quality is not impaired through implementation of this provision.

A noncomplying permit may be issued if: the receiving water is in a watershed with an approved watershed management plan, the plan includes so-called "assurances" that water quality standards will be met by some "specified date," and the point source does not have a history of "significant noncompliance" with its permit. Water quality stands to lose far more than it stands to gain under this provision.

First, since a watershed plan is not required to include an entire watershed, this provision could be available in a portion of a watershed that is not even covered by a watershed plan, so long as the receiving water is in a watershed for which a portion of the watershed is covered by a watershed plan.

Second, the requirement that the plan include assurances that water quality standards will be met by a specified date is so vague as to be meaningless. This criterion could be met by the statement "I promise to meet water quality standards by the year 3000." There is no requirement for any demonstration that the "assurances" be anything other than empty promises that are not backed up by a reasonable certainty of meeting water quality standards. And, there is no requirement that the "specified date" be anytime within the lifetime of anyone living today.

5. Exemptions for So-Called "Waste Treatment Systems".

The bill includes several exemptions for so-called waste treatment systems. Sections 401, 411 and 502 of the bill exempt specified waste treatment systems from the definition of waters of the United States. Since the jurisdiction of the Clean Water Act extends only to navigable waters, excepting a waterbody from the definition of navigable waters exempts it entirely from the Clean Water Act. The first of the provisions below relates to waste treatment systems generally. The second one addresses a subset of the first, concentrated animal feeding operations. The interaction be-

tween the two provisions, and the reasons for having multiple provisions on this issue, are not clear.

a. Exemption In New Definition of "Waste Treatment Systems": Section 411 and 502 of the bill, adding a new Section 406 and amending Section 502(7) of the Act, remove significant waterbodies from protection under the Act by defining them not to be "navigable waters."

Section 411 of the bill directs EPA to issue regulations that define "waste treatment systems." Section 502 in turn provides that waste treatment are not navigable waters. The bill mandates that certain areas be included in the definition of waste treatment systems, and therefore are not waters subject to the Act. The bill thereby limits the Agency's authority to apply its expertise and exercise discretion to appropriately limit the exclusions from the Act in developing these regulations.

Unless covered by an exception, the following areas are required to be exempted from regulation under the Act: "areas used for detention, retention, treatment, settling, conveyance, or evaporation of wastewater, stormwater, or cooling water. * * *" The bill creates three exceptions to the exemption: (1) if "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 [enactment]"; (2) 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 (3) 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.

The bill precludes EPA and the States from requiring a new permit under Sections 402 or 404 of the Act before issuing the regulations, 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 within one of the three exceptions noted above.

Like most of the other waiver provisions, this concept was not addressed at any of the seven hearings held during this Congress before the Water Resources and Environment Subcommittee, so its impact has not been explored by the Committee.

Since waterbodies that qualify as waste treatment systems under this provision would no longer be protected under the Clean Water Act, the waterbodies would be available for unrestricted discharges of industrial waste. Industries that generate large quantities of wastewater and have undeveloped land adjacent to waterbodies could take advantage of and abuse this provision. For example, mining, electric power and the pulp and paper industry are known to use large areas for detention, retention, treatment, settling or conveyance of wastewater.

The impacts of this provision are illogical and significant. The following illustrate some of its potential consequences:

The owner of a mine who, before enactment of this provision, commenced construction of an impoundment in a navigable water, would be able to discharge wastewater containing mine tailings into the water above the impoundment, no matter how toxic the discharge. Such a discharge would not be covered under the Clean

Water Act if the discharger had not obtained a permit under Section 402 of the Act prior to February 15, 1995.

An electric power plant that impounds a stream and uses the pool created above the impoundment as a cooling pond would be exempt from NPDES permit requirements under the Clean Water Act even if the owner allows the area to be used for recreational purposes by residents of the State in which the plant is located, or allows the taking of fish or shellfish for sale within the State, if the plant had not obtained an NPDES permit prior to February 15, 1995.

However, a permit would be required if the owner allows the area to be used for recreation by interstate or foreign travelers, or allows taking of fish or shellfish from the area for sale in interstate or foreign commerce.

If, on February 1, 1995, a State learned that a factory was discharging its wastewater into a pool formed by an impoundment it constructed in a stream, and determined that the discharger is required to have a permit since these are discharges into a water of the United States, the discharger will not be required to obtain a permit if the State had not issued a permit before February 15, 1995.

These examples demonstrate some of the perverse incentives and illogical effects of this provision. It encourages so-called waste treatment systems to be located directly in waters of the United States, rather than at locations where they are less likely to adversely impact water quality. It rewards violators who did not obtain NPDES permits prior to February 15, 1995, regardless of whether they were required by law to do so. It provides greater protection to interstate and foreign travelers who fish or swim in an electric utility plant cooling pond than it does to residents of the state, even though the later are far more likely to frequent the pond. It threatens to eliminate protections of the Clean Water Act from certain streams and other waters of the United States and turn them into dump sites.

b. Exemption for Confined Animal Feeding Operations: Section 401 of the bill, which amends Section 402(a) of the Act, excludes from the definition of waters of the United States "waste treatment systems, including retention ponds or lagoons, used to meet the requirements of this Act for concentrated animal feeding operations ["CAFOs"]." This sweeping provision exempts from regulation under the Act all waters of the United States that are used as "waste treatment systems" (eg. for settling, retention, etc.) for animal wastes at CAFOs.

This provision gives a license for factory farms, no matter how large, to dump animal wastes into lagoons, retention ponds, wetlands and other waters of the United States without a permit, destroying wetlands and degrading water quality. It is a total exemption for an entire industry, ultimate special interest loophole.

6. Waivers for Select Municipalities.

Section 309 of the bill contains four different waivers of secondary treatment requirements for discharges by POTWs. Collectively, these provisions make more than 10,000 communities eligible for waivers from the technology-based minimum level of treatment that all municipalities were required to have met by July 1, 1988.

Three of the provisions apply to ocean discharges by POTWs. The fourth applies to discharges from POTWs that serve small communities.

a. Waivers for Municipal Ocean Discharges: Section 301(h) of the Clean Water Act allowed coastal communities to apply for waivers for secondary treatment, if the applicant could demonstrate that a lesser level of treatment would not harm the marine environment. Section 301(h) sets forth detailed criteria that must be met to demonstrate that a waiver will be sufficiently protective. The authority to apply for a waiver expired in 1982.

Three of the four waiver provisions in Section 309 of H.R. 961 apply to coastal discharges by POTWs, and are intended for the benefit of San Diego and Los Angeles, California, and Mayaguez, Puerto Rico, respectively. Hundreds of other municipalities are in the process of upgrading or have upgraded their sewage treatment plants to meet the law's longstanding secondary treatment requirements. The communities singled out for waivers in H.R. 961 were not selected because their situations are unique. They are not.

The waivers are established in three separate and notably inconsistent provisions in the bill.

Section 309(a) of the bill (amending Section 304(d) of the Act) is intended to benefit (but does not mention) San Diego. It provides that treatment by a POTW will be "deemed the equivalent" of secondary treatment if the facility employs chemically enhanced primary treatment, discharges into the ocean at least 4 miles offshore into a depth greater than 300 feet, the discharge is in compliance with local and State water quality standards, and the discharge will be subject to an approved ocean monitoring program.

Section 309(b) of the bill (adding Section 301(s) to the Act), which is intended to benefit (but does not mention and in fact is not limited to) Los Angeles, contains different terms. It requires issuance of a ten year permit that modifies secondary treatment requirements if the POTW discharges at least 1 mile offshore to a depth of at least 150 feet and meets other specified requirements, including that the effluent receives at least chemically enhanced primary treatment and achieves a monthly average of 75% removal of suspended solids.

Section 309(d) of the bill (adding Section 301(t) to the Act), expressly addresses Puerto Rico. This provision authorizes a study regarding the feasibility of constructing a deep water ocean outfall at Mayaguez, Puerto Rico, and reopens the deadline for applying to EPA for a waiver pursuant to Section 301(h) of the Act.

There is no policy rationale to justify the substantial inconsistencies between these provisions. For example, of the three waiver provisions, only the one for Puerto Rico requires the applicant to demonstrate that the waiver will not harm the coastal environment, as required under Section 301(h) of current law. That demonstration, which was required of each of the 40 municipalities that timely sought and obtained waivers, is waived for San Diego, Los Angeles, and all of the other municipalities that qualify to apply for waivers under the bill's provisions. This Congressional waiver of any scientific standard is at direct odds with the themes of sound science and risk analysis that have been embraced in the "Contract With America."

By way of further example, two of the three provisions (Los Angeles and Puerto Rico) require that any waiver be reevaluated at the time of permit reissuance. This is consistent with current law, under which all permits, including all waivers issued under Section 301(h), are reviewed every five years (under H.R. 961, this would be extended to every ten years). The purpose of the review is to evaluate limits in view of new information and new standards. Under the bill, San Diego's waiver is permanent—it is outside the permitting system and may never be revisited.

Also highly problematic is the fact that, notwithstanding any intentions to the contrary, the waivers are not limited to the three locations mentioned. EPA estimates that at least nineteen communities meet the criteria for waivers under Section 309(b) of the bill, including several in California and Washington state. Six large dischargers in South Florida could become eligible by extending their outfalls by one-third of a mile. EPA estimates that more may be eligible.

The single most noteworthy aspect of the San Diego waiver provision is that it is totally and completely unnecessary. San Diego applied for a waiver of secondary standards in April of 1995, and EPA has publicly announced its expectation that the waiver will be granted and is committed to act on the application expeditiously.

H.R. 961 is not the first time San Diego has been singled out by Congress for preferential treatment. San Diego was able to apply for a waiver last month only because of a bill passed in the closing days of the 103rd Congress and signed into law by President Clinton in October 1994. Of the hundreds of communities required to achieve secondary treatment, only San Diego was authorized to apply for a waiver last year, 14 years after the deadline.

Last year, San Diego agreed to reduce effluent through a major reclamation project, meet treatment standards only slightly less strict than secondary for two pollutants, and make the demonstration for a waiver in current law regarding impacts upon human health and the environment, and argued that it should therefore be given a waiver of secondary treatment requirements for two pollutants. Notwithstanding that earlier San Diego had voluntarily withdrawn its waiver application, and had agreed to meet secondary treatment standards, Congress accepted last year's promises and passed a bill which allowed San Diego to apply for its waiver.

EPA has spent considerable resources in assisting San Diego in the development of its waiver application. There is every indication that EPA will approve the waiver in the near future. There is no conceivable justification for Congress to again modify the standard for a waiver, much less grant a permanent waiver.

Section 309(a) of the bill allows San Diego to back out of what it said it was able to do and agreed to do. It eliminates minimum standards for Total Suspended Solids and Biological Oxygen Demand that were included in the law passed last year, provides for a broad waiver that is no longer limited to these two pollutants, requires "compliance with all local and state water quality standards for the receiving waters" notwithstanding that state and local standards do not apply at the outfall's location four miles out, and eliminates any reclamation requirements.

It is sometimes said that the Scripps Institute and the National Academy of Sciences support these provisions. Neither statement is accurate. Scripps has taken no position on the bill's waiver provision, although individual employees of Scripps have expressed their personal views. And, the National Academy of Sciences made it quite clear when it testified before the Subcommittee on Water Resources and Environment that it did not take a position on the question of whether a secondary waiver would be justified or harmful in the case of San Diego.

The three waiver provisions under Section 309 mark a dramatic step backward from minimum standards for POTWs. Neither the number of coastal cities that will be eligible for waivers under Section 309(b) of the bill, nor the impact of returning to an approach more akin to primary treatment (which simply skims and settles solids out of sewage), has been examined. Unfortunately, in time, their impacts will become known, to recreational beach users, the fishing industry, and others, and all will pay the price.

b. Waivers for Small Treatment Systems: Section 309(c) of the bill, which adds a new Section 301(t) to the Act, creates a procedure for communities that serve 20,000 or fewer people to obtain a waiver from secondary treatment requirements. Waivers are available where the effluent is "primary" from domestic users, the POTW operates a system that is "equivalent" to secondary treatment or will provide an "adequate" level of protection to human health and the environment and contribute to the attainment of water quality standards.

While we could support certain targeted relief, in the form of extensions and financial assistance, to certain small and hardship communities, and agree that development of innovative and alternative treatment techniques should be encouraged in appropriate circumstances, the sweeping waiver in this provision is unnecessary, creates a heavy burden on states and EPA, and promises to degrade water quality.

According to EPA, more than 10,000 communities will be eligible to apply for this new waiver. A substantial number of them currently are meeting secondary or more stringent water quality-based limits. This provision would encourage these dischargers to turn off existing treatment to save operational costs, with no savings in capital costs. Moreover, since many of these municipalities received considerable federal funding to achieve secondary treatment, federal taxpayer dollars will have been wasted.

In addition, the surge of applications requiring case by case determinations will be another drain on the resources of the State and EPA water programs, who will have to interpret yet another vague standard in deciding whether a POTW provides an "adequate" level of protection. The inadequacy of this standard is heightened by the fact that this waiver is available to POTWs that receive industrial waste, so long as the wastewater meets the vague standard of being "primarily" domestic.

7. Countless Additional Waivers: The examples discussed above provide only a taste of the bill's devastation of a generally very effective point source control program. The list cited is by no means exhaustive. Other equally troublesome waivers include: a handful of loopholes for the mining industry, relating to stormwater dis-

charges from mineral exploration and mining sites (Section 322(p)), and waivers of water quality standards for coal remaining operations (Section 301(d) of the bill, amending Section 301(p) of the Act); extending an exemption from applicable effluent limits for certain iron and steel manufacturing plants that are "central treatment facilities" (Section 307(g) of the bill, amending Section 304(n) of the Act); a postponement by up to five years for photo processing labs and others who discharge silver to POTW's to meet pretreatment requirements for silver, including pretreatment requirements imposed by the POTW (Section 312 of the bill, amending Section 307 of the Act); and a reduction in the standard for cooling water intake structures (Section 318 of the bill, amending Section 316(b) of the Act). And there are more, many more . . . .

DESIGNATED USES AND WATER QUALITY STANDARDS

The attainment or nonattainment of desired water quality under the Clean Water Act is accomplished by measuring actual water quality against water quality standards.

Unlike other environmental laws where the Federal program sets absolute standards for pollutants in the environment, the Clean Water Act allows for a partnership with the states where the states have a lead role in defining water quality standards. Water quality standards are a combination of water quality criteria and designated uses.

Designated uses are set by the states. They reflect the use of the waterbody which the state determines is appropriate. Examples of designated uses are aquatic life support, fish consumption, shellfish harvesting, drinking water supply, primary contact recreation, secondary contact recreation, and agriculture. Each of these uses requires a different level of water quality—differing levels of control of concentrations and amounts of pollutants.

Water quality criteria are usually developed by EPA. EPA does the study and analysis necessary to determine what amount and concentration of pollutants are allowable in a waterbody which will allow for the state-selected designated use to be met. After a state has determined a designated use, the corresponding water quality criterion is chosen for that use, and the result is the water quality standard which is applicable to that waterbody. The process is repeated for each waterbody, and for those pollutants for which EPA has developed criteria.

Section 303 of the bill would amend section 303 of the Act to provide a mechanism for states to downgrade existing uses. Currently there are methods to remove a designated use which is not being met, but the downgrading of existing designated uses which are being met represents a major step backwards in maintaining and achieving water quality.

Currently, a state may change a designated use if attaining the use is not feasible because the more stringent controls would result in substantial and widespread economic and social impact. The bill would expand the ability to downgrade water quality standards if a state determines that the costs of achieving the designated use are not justified by the benefits.

This again raises the continuing problem with the bill in that cost is given a status greater than the concern for the environ-

mental and human health impacts. Cost is and always should be of concern in the Clean Water Act. However, cost should be used when determining the method of achieving water quality goals—it should not operate as a limit upon those goals.

Even more troubling than the new standard for downgrading uses where the use has not yet been attained is the new authority to downgrade uses where the use is being attained. To allow states to downgrade uses which are being attained is a total abandonment of the commitment to make our Nation's waters fishable and swimmable as envisioned by the 1972 Act.

The bill would allow states to downgrade uses "if the state determines that continued maintenance of the water quality necessary to support the designated use will result in significant social or economic dislocations substantially out of proportion to the benefits to be achieved from maintenance of the designated use." This provision will set up the opportunity for the worst type of competition among the states—trading environmental protection for jobs. That is precisely what a uniform clean water program was designed to avoid.

By definition, the dischargers to a waterbody that is currently meeting water quality standards are currently controlling pollution sufficient for the waterbody to achieve its state designated use. Therefore, if continuing to meet the standard would result in "significant social or economic dislocations," then a situation where a discharger threatens to relocate out of the area would be a prime target for the provision. Business and industry would now be in a situation where they could hold states hostage, threatening to leave the state, unless the state agreed to downgrade the designated use of the waterbody, and therefore allow for increased discharge of pollution.

This new authority will promote pollution shopping and may force states to abandon long-term environmental goals for short-term economic gains.

The provision is also deficient in that the protection of public comment in the process appears to be lacking. Currently, designated uses are reflected through the adoption of state water quality standards. The revision of state water quality standards is done after public hearings. Since changing a designated use will have the effect of changing the water quality standard, such changes should be subject to public comment.

Additionally, the bill provides that water quality based permits are to be modified to conform to any modified designated use. Again the bill has removed the protection associated with the public comment requirements associated with the issuance of permits under the Clean Water Act. Since the language states that modifications will be made "notwithstanding any other provision of this Act," the public participation features appear to have been overturned.

This provision allowing the abandonment of currently achieved water quality, in combination with the reduction of the protection of the anti-backsliding provision and the reduction of the anti-degradation protection, will reduce the water quality of the Nation and unacceptably postpone the date by which water quality will meet the original goals of the Clean Water Act.

THE BILL WILL DRAIN MUNICIPAL, STATE AND FEDERAL RESOURCES

H.R. 961 represents a frontal attack on the already inadequate resources of local and State governments and the federal government. The new burdens created by the bill are too plentiful to fully address here, but a sample of some of the most onerous aspects of the bill follows.

The multiple waivers and exemptions created by the bill and discussed above will require investment by States and EPA of considerable resources in making case by case waiver determinations on numerous waiver applications. The difficulty of making these determinations will be exacerbated by the nature of the new standards in the bill, many of which are vague and unclear and, in some instances, patently impossible to implement. The sheer number and lack of clarity of the new waivers is compounded by the absence of any provision for federal guidance to ensure some degree of consistency in application for the waivers. Federal guidance could avoid the need for each permit writer to wrestle in isolation with difficult scientific and policy determinations. The potential availability of numerous waivers inevitably will prolong the time for permit issuance, by increasing the complexity of developing new or revised permits in the first instance, and the likelihood of litigation borne of permit appeals.

In addition to the newly available waivers, the bill's provisions regarding water quality criteria and State water quality standards will require numerous additional modifications to discharge permits. Since responsibility for administering the Clean Water program has been assumed by 40 states, the states will be forced to bear the greatest weight of the new and greatly increased burdens associated with permit issuance.

The bill will further drain resources by dramatically increasing the amount and complexity of litigation under the Clean Water Act. For example, the so-called "statistical noncompliance" defense established under Section 404 of the bill will turn what are currently routine and relatively straightforward enforcement actions into prolonged and complex document intensive proceedings. This new defense allows any person who has admittedly exceeded any technology-based effluent limitation in its permit to claim that it has not violated its permit or the Act. It provides that a discharge in excess of a permit's technology-based effluent limitation is deemed in compliance with the permit limit if the number of exceedances "are no greater, on an annual basis, than the number of excursions expected from the technology on which the limit is based. * * *" A similar defense is established under Section 307(d) of the Act for industrial dischargers to POTWs.

This defense invites violators to effectively relitigate in every enforcement action the rulemaking process which resulted in the effluent guideline. It is based upon an erroneous assumption that EPA sets technology-based effluent limits with the expectation that they will be exceeded a certain percentage of the time. Further, because the provision would allow a discharger to calculate noncompliance on an annual basis, a discharger would be allowed to violate its permit with impunity during the season of greatest activity, and on an annual basis claim compliance. Moreover, since

the defense is based solely on the number of excursions and not on their magnitude, it could excuse a one-time violation with devastating environmental impacts if, when that violation is averaged with a large number of relatively minor violations, the discharger had a high compliance rate. This provision is certain to dramatically complicate enforcement actions and thereby drain resources of State and federal agencies responsible for enforcing the Clean Water Act.

Other provisions will deplete resources available to municipalities to meet requirements of the Clean Water Act. For example, Section 603(a) of the bill, amending Section 603(c) of the Act, enlarges eligible uses of the State Revolving Fund to include activities such as the acquisition by any person, including a private entity, of property rights for the restoration or protection of privately owned riparian areas. Such activities divert funding from actual treatment and can quickly deplete the funding intended to assist municipalities in meeting Clean Water Act requirements.

Other provisions that reduce standards for treatment by industrial indirect dischargers are likely to heighten the burdens on municipalities. For example, Section 406 of the Act requires that under specified circumstances EPA must grant intake credits for industrial dischargers under Section 307(b) of the Act. The provision would relieve industrial dischargers of responsibility for removing or treating the amount of a pollutant in its discharge below the amount in its intake. This credit is required without regard to the impact that the intake pollutants may have on the POTW, its receiving water, sludge quality, or other applicable requirements, and corresponding increases in treatment costs that will be borne by municipal ratepayers. In addition, as discussed above, the reduction in pretreatment requirements under Section 311 of the bill threatens to impede the effective operation of POTWs, which would increase burdens on municipalities.

The above are only a few examples of the bill's many provisions that increase burdens on State and local governments and EPA.

WETLANDS

Perhaps no issue has so defined controversy and the Clean Water Act as has the issue of wetlands protection. While there are many programs which can operate to protect and advance the protection of wetlands, only section 404 of the Clean Water Act actually serves to regulate activities which could degrade wetlands.

There have been two ideologies concerning the wetlands program. Do you wish to protect wetlands, yet make the regulatory program less cumbersome, more efficient, and more responsive to the needs of landowners, or do you wish to deregulate most of the wetlands in this country and accelerate wetlands losses? This bill is designed to accomplish the latter.

Historic wetlands losses have been staggering. States such as California and Iowa have lost over 90% of their historic wetlands. Other states such as Alaska have preserved much of their wetlands, although development pressures continue to diminish wetlands even in those states. Fortunately, on a national basis, the trend in wetlands losses has slowed. Current estimates of loss are at 250 to 300 thousand acres per year, down from a high of 400–

500 thousand acres in the 1960's. While this is encouraging, the fact remains that under the existing program very substantial wetlands losses continue.

Wetlands were once thought of as areas which served as breeding grounds for disease and as eyesores, to be filled and eliminated when possible. We now know that wetlands serve valuable functions of water quality, flood control, groundwater recharge, and wildlife and fishery habitat. We also know that wetlands provide enormous economic benefits to the Nation as well.

The economic value of wetlands for flood control alone is enormous. For example, the Corps of Engineers has estimated that the loss of floodplain in the Charles River basin in Massachusetts would increase flood damages by $17 million per year. Nationally, estimates of flood damages prevented by wetlands are placed at nearly $31 billion annually.

Wetlands are also vital to other aspects of the economy such as fish and shellfish harvesting and recreation. Contrary to the belief that protecting wetlands retards economic development and costs jobs, wetlands in fact contribute to the economy of the Nation. The $55 billion commercial and recreational fishing industry in Florida, for example, employs 110,000 people, with a dockside value of $162 million, and annual sportfishing industry expenditures of over $3 billion.

Unfortunately, Title VIII, the misnamed Comprehensive Wetlands Conservation and Management Act of 1995, will add nothing to the protection of wetlands in this country, but will allow for the loss trend to be increased.

The bill would not contribute to the conservation of wetlands. Instead, it chooses to adopt an arbitrary and unscientific definition of wetlands so deficient that areas of wetlands in the Everglades no longer would be considered to be wetlands. And, as if to add insult to injury, the bill would reduce the level of protection afforded even those wetlands which remain.

When the sponsors of this legislation described the bill originally, they said that the wetlands title was based upon H.R. 1330 from prior Congresses. The proponents of that bill always maintained that they were expanding the types of activities regulated under the section 404 program, but that in return, there would be a right of compensation for the loss of property rights which accompanied the inability to use one's property as one saw fit. The original legislation also contained a presumption that permits would not be issued to undertake activities in type A wetlands, and it would have assured the protection of the most valuable wetlands by requiring the federal government to purchase those wetlands and protect them in public ownership.

While H.R. 1330 in past years was not a bill which was worthy of being enacted, it at least included a few provisions which would have sought to protect a few wetlands. None of the wetlands protecting features of H.R. 1330 have been retained, all that is left of that proposal is the deregulation of wetlands and accelerated destruction of wetlands resources.

First, the definition of what is a wetland. Current scientific knowledge states that a wetland must have three characteristics—hydric soils, hydrophytic vegetation, and hydrology sufficient to

cause the first two. Even the bill acknowledges that this is the case. Where the bill fails is that the bill then completely ignores science and says that as a matter of policy and law, wetlands which do not have water at the surface for at least 21 days during the growing season will not be wetlands, regardless of whether they are in fact wetlands, and regardless of their value and functions.

Soil scientists will tell you that it is not necessary for water to be at the surface for 21 days for hydric soils to form. Likewise, botanists will tell you that one need not have 21 days of water at the surface for hydrophytic vegetation to occur. All that is necessary is for anaerobic conditions to be formed, and for plants which cannot live in such conditions to no longer be present.

Surprisingly, while the halls of Congress have been filled with the calls of making sure that environmental programs are based upon "sound science," when it comes to wetlands, all pretense of making decisions based upon science is abandoned. There is a rightful place for policy in determining what the Nation's wetlands laws will look like. But, that place is not in deciding what is or is not a wetland.

As policymakers, we should be focusing our efforts upon what we want to do about regulating activities in wetlands, not what is a wetland. Once science tells us what is a wetland, it is then our responsibility as lawmakers to determine what the wetlands program should be. If we do not want to regulate activities in all wetlands, then we should debate that issue and make a determination honestly: we should say we will not protect wetlands, not that what we choose not to protect is therefore not a wetland.

For example, we could decide that there is no federal interest in regulating activities in wetlands which are less than one acre in size, or 10 acres for that matter. But, we would be making a determination based upon the types of policy judgments which the Congress is supposed to make—determining the federal interest, not turning science upon its head.

However, as this bill is currently written, the arbitrary definition of a wetland ignores science and eliminates the policy option of protecting even valuable wetlands. It is appropriate to set aside from protection very small wetlands, artificial wetlands, and the like. That was proposed and rejected in Committee in lieu of this much more far-reaching standard, which exempts not only small and marginal wetlands but also vast portions of some of the most important wetlands in our country.

Second, the classification of wetlands will result in diminished protection of even valuable wetlands. What the bill creates is a new system of wetlands classification which will reduce the level of protection for the majority of wetlands which remain regulated, and will eliminate any protection for other wetlands.

Under the bill, type A wetlands are considered to be the most valuable and will allegedly be afforded the greatest protection. To qualify as a type A wetland, it must be of critical significance to the long-term conservation of the aquatic environment of which such wetland is a part, and meet 4 other requirements.

A type A wetland must serve a critical function, including the provision of critical habitat for a concentration of avian, aquatic, or

wetland dependent wildlife. This requirement is deficient in several respects. First, the use of the term "critical" implies that the function and habitat must be indispensable or vital to the relevant species. This is too strict a test to determine whether a wetland is to be afforded protection. Additionally, the requirement of a concentration of wildlife creates a hurdle which might often not be able to be met. For example, what would constitute a concentration of bald eagles? Such birds feed in wetland areas, but because they are birds of prey, they rarely exist in any concentrated population. Therefore, a wetland serving as habitat for bald eagles would not appear to be able to qualify as a type A wetland under this language.

A type A wetland must represent a scarcity within the watershed of the functions identified, such that the use of the wetland would seriously jeopardize the availability of the identified functions. This language would allow for the destruction of even valuable wetlands which would otherwise be type A, except for the fact that the wetlands happen to be in abundance in the area. Since such an abundant wetland would not qualify for type A protection, these valuable wetlands could be filled until they became scarce. This will accelerate the decline of valuable wetlands in this country.

A type A wetland must also be one where there is unlikely to be an over-riding public interest in the use of such wetlands for purposes other than conservation. This is one of the most troubling and unworkable parts of the wetlands classification scheme of the bill. First, this might be the type of inquiry which is appropriate in determining whether a particular activity should be authorized in a permit, but it is entirely inappropriate in determining the type of wetland which is present. Second, when a classification occurs, the classifying official will be expected to make predictions based upon future expectations of activity which are unknown at the time of the classification. If a wetland is of "critical significance," it is of critical significance. It is not of less significance because there may someday be a public interest in destroying the wetland. This is yet another example where the bill unacceptably intertwines policy decisions with what should be a scientific inquiry.

Even after a wetland passes the scrutiny to become classified as type A, it is not entitled to a high level of protection under the bill. Permits are specifically authorized using a sequential analysis of avoidance, minimization and compensation. Although these are familiar words to the existing permitting process, the emphasis needs to be on whether the proposed activity can avoid impacting wetlands, and therefore obviate the need for a permit rather than assume that a permit will be granted.

Too great an emphasis is placed upon ineffective requirements for mitigation. There is no general rule that losses of type A wetlands will be compensated. Under the bill, mitigation is such as is "appropriate to prevent the unacceptable loss or degradation of type A wetlands." This implies that mitigation will be used only when losses or degradation are unacceptable. Other losses will be uncompensated. Apparently, there are acceptable losses of type A wetlands for which no compensation will be required. If type A is to reflect the Nation's most valuable wetlands, then avoidance

rather than mitigation for losses should be the preference, and not the other way around as provided in the bill.

Additionally, the bill says that state approved mining reclamation will fully compensate for wetlands losses, regardless of whether any wetlands protection or restoration efforts are associated with the reclamation. This is another industry specific exception to the general rule which fails to adequately consider the environmental impact upon the resource being degraded.

Once the bill creates tests for type A wetlands which are a mix of science and policy, and allows for the loss and degradation of these wetlands with inadequate requirements for mitigation, the bill includes yet another way to limit the protection afforded to the most valuable wetlands. It places an artificial cap upon the area in any county, borough or parish which may be considered to be type A wetlands. Under the bill, by operation by law, no more than 20% of any jurisdiction could be classified as type A—regardless of how valuable the wetland might be, how scarce it might be, or what the impact of the loss of wetlands functions might be on human welfare or the environment.

This arbitrary limitation on type A wetlands is yet another glaring example of the true motivation behind title VIII. It is not about making the wetlands regulatory process more fair and reasonable. It is not about making wetlands regulation more understandable to the small landowner. It is not about creating the flexibility to recognize that certain wetlands are worthy of greater protection than others. No, this bill is about assuring that wetlands regulation is greatly reduced in this country whether or not the wetlands serve critical functions benefitting people or wildlife.

The second category of wetlands are those called type B. Type B wetlands are defined as those which provide significant wetlands functions, or provide habitat for a significant population of wetland dependent wildlife. These wetlands would have even less review for protection afforded them than would type A wetlands. In addition, these wetlands are subject to less extensive mitigation requirements. For example, the costs of mitigation and the social, recreational and economic benefits associated with the proposed activity are to be balanced one against the other.

Additionally, the types of mitigation activities which are deemed acceptable include activities which will not contribute to the Nation's wetlands base, and will result in losses of wetlands functions and values. For example, preservation of existing wetlands is specifically made eligible as a mitigation method for type A and B wetlands. Preservation should not be considered in and of itself to be compensation for wetland losses. Such a provision assures the continued decline of wetland resources. The bill also allows for coastal protection projects to qualify as mitigation. Coastal protection often consists of placing rip rap on eroding shores. It can hardly be argued that replacing a wetland with rip rap will enhance the habitat features of a wetland.

The final type of wetland classification is for type C wetlands, which will be everything else which meets the new, unscientific definition of a wetland. The bill also specifies that certain wetlands will as a matter of law be type C. Classification as type C is particularly important because such a designation means that a per-

son does not need any permit to undertake any activity in these wetlands. These include wetlands serving marginal wetlands functions, but which exist in abundance, are prior converted croplands, are fastlands, or are within intensely developed areas. A review of these classifications demonstrates the further erosion of any wetland protection under the bill.

For example, the term prior converted cropland is defined in the bill in a much broader fashion than it is defined for purposes of existing agricultural programs. Under the definition in the bill, any agricultural land where either wetland hydrology has been removed, or the land was used for agricultural production prior to December 23, 1985, would be prior converted cropland, and no permit would be required for any activity since the are would be type C.

As a second example, the classification for fastlands. This term is also defined. It includes all lands behind levees which permit the use of such lands. In some areas of the country, this could include thousands of acres of potential wetlands, and extend for miles perpendicular to the levees. By law, these areas would be permanently exempt from any permitting or mitigation requirements as wetlands.

The bill also includes the ill-advised provisions concerning takings which were included in the "Contract with America." Government, at all levels, has the right to affect actions which individuals take upon their private property as necessary to protect other property owners and the public health and safety. This has been well established and well documented. If regulation on the use of property becomes so invasive as to diminish the right to use of property so as to deprive the owner of the economic use of the property, then the government has engaged in a taking, and the property owner is entitled to compensation. What is included in this bill is a gross and unwarranted expansion of the rights of a small group of property owners at the potentially great expense of taxpayers generally.

The 20% threshold for compensation is simply too low. Variances in market conditions and appraisals can cause a 20% variance in property values from time to time. More importantly, the diminution in value is to be calculated upon the effect on any portion of the property. In practice that will mean loss of far less than 20% will result in the taxpayers having to pay for a "taking."

For example, let's assume a property owner possesses a 200 acre parcel which the owner seeks to develop into homes on one-half acre lots. If the property contains even a one-half acre wetland, the equivalent of one lot out of 400, that owner will be able to seek and receive compensation from the federal government if the use of that one-half acre parcel is limited by the wetlands regulatory program. The analysis would have completely ignored the fact that the owner was able to develop the other 199.5 acres of the parcel, and that even if the loss of value of that half acre lot was 100%, the loss of value of the total parcel would have been only one-quarter of one percent. Clearly, any calculation of the diminution in value should consider the entire parcel and the economic effects of regulation on it.

Also of concern is the requirement that any compensation due to property owners be paid out of the operating budget of the agency whose action caused the reduction in property value. While clearly the intent of the provision is to discourage agencies from taking any actions which would diminish property values, this provision could have a devastating effect upon the programs of the Corps of Engineers and of the Department of Defense, of which the Corps is a part.

Although the bill is very unclear, it appears as though there is an obligation on the part of the agency to pay compensation in a timely fashion. Because the threshold is so low for obligating federal payments, this could result in great strains upon the budget of the Corps of Engineers. The result would be an inability to carry out is civil works functions, and an adverse effect upon flood control and navigation. Carried to its extreme, the bill could even require the Department of Defense to divert funds from its basic defense mission to the payment of what are arguably unfounded claims of takings.

The compensation issue also appears to create an unworkable situation to the disadvantage of both the government and the property owner. The bill provides that a permit issuance or denial is subject to compliance with the compensation provisions. Therefore, the issuance of a permit which includes conditions which might cause a 20% reduction in value to a portion of property, and the denial of a permit which might cause a 20% reduction to a portion of a parcel of property cannot occur until the compensation is paid. Apparently, the property owner would then be in legal limbo awaiting payment from an agency—a payment which the agency may or may not have the funds to make in the current, or even the subsequent fiscal year.

The bill also includes a very expensive and unnecessary requirement for the Secretaries of the Army and Agriculture to undertake a 10-year program to classify all of the wetlands in the United States. Testimony at the hearings indicated that such an effort could cost billions of dollars and require thousands of new federal employees. This is a tremendous waste of resources at a time when all discretionary programs are being evaluated for reductions, and the Corps in particular has been targeted with nearly $1 billion in cuts (25% of its civil works budget) over the next 5 years.

Such a classification is unnecessary because there is no reason to suspect that most of these wetlands acres are scheduled for development in the foreseeable future. Determining the exact location of wetlands is a resource intensive project, requiring metes and bounds descriptions and actual on-site inspection on the property. It is information which will be nearly useless in the greatest number of cases, because there are no plans to develop the property. At present the relative importance of a wetland is evaluated and taken into account at the time someone seeks to develop it. It would be an enormous waste of taxpayer dollars to require that determination to be made of millions of acres of wetlands which no one had plans to develop in the foreseeable future.

The bill then requires that the presence of wetlands upon a parcel of property be placed upon the land records in the appropriate county or parish. This will also cost millions of dollars in employee

costs and in recording fees since local governments collect charges for recordations upon the land records.

Finally, the wetlands title, having reduced the number of acres which even qualify as wetlands, and having reduced the protection which is afforded the remaining wetlands, creates numerous additional exemptions to the wetlands permitting program. While some of these exemptions are necessary, such as anthropogenic wetlands and certain created wetlands in upland areas, other exemptions reflect little more than the desires of certain areas of the country or certain special interests to no longer be subject to any federal regulation.

These unwarranted exceptions include numerous activities in Alaska, 10-acre per year expansions of cranberry producing areas, utility distribution and transmission lines, concentrated animal feeding operations, railroad lines, actions pursuant to state and local land management plans (because of nonexistent safeguards), actions pursuant to a marsh management and conservation program in Louisiana (because of nonexistent safeguards), aggregate or clay mining, oil and gas structures, and construction of log transfer facilities and mine tailing impoundments, among others.

When added together, the bill's major accomplishment would be to greatly accelerate the loss of wetlands in this country. There are no goals of preserving wetlands, only methods to assure their development. This bill would result in the loss of a resource which we cannot afford to lose, which cannot be replaced, and which will prove costly to live without.

NONPOINT SOURCE POLLUTION

Water pollution is often associated with large pipes spewing obnoxious chemicals from industrial and manufacturing plants. These are referred to and regulated as point sources. While this was the major source of water pollution 25 years ago, these point sources have been largely controlled through the current Clean Water Act permit program. Today, the major remaining source of water pollution comes from diffuse sources, known as nonpoint sources. These include land use activities such as construction, agriculture, logging, and mining, as well as atmospheric deposition and contaminated sediments.

The states conduct a biennial survey of the quality of their waters. According to the most recent survey, agriculture is now the leading source of water quality impairment in rivers and lakes. For estuaries, agriculture was third. Clearly, the emphasis for a renewed Clean Water Act needs to be upon nonpoint source pollution, and agriculture must do its share.

Unfortunately, H.R. 961 does not include a program which will result in the type of reductions in nonpoint source pollution which water quality needs require. It fails to include real deadlines for attaining water quality standards around which an effective program could be developed and implemented. It also fails in that too much of the "new" nonpoint source program addresses exceptions from the program rather than achieving results. And it repeals the one feature of nonpoint pollution control already in the books, the nonpoint program for coastal zones.

Current law requires that best management practices to control nonpoint sources are to be utilized at the earliest practicable date. The amendment strikes references to "best" and also deletes the requirement that steps be implemented at the earliest practicable date. Instead, there is a new standard developed to provide for reasonable further progress toward the goal of attaining water quality standards within 15 years of approval of the state program (which is 4 years after enactment for a total of 19 years.)

Unfortunately for the program, it is very unclear what the standard of performance actually is. If the intent is to attain water quality standards within 19 years, then the bill should say so. Instead, the perplexing language seems designed to be loose enough to allow states and individuals to not achieve water quality standards even after 19 years. Later, however, the bill speaks in terms of attaining water quality standards as expeditiously as practicable, but not later than 15 years after program approval.

If the bill stands for a firm target of achieving water quality standards through reductions in nonpoint source pollution in no greater than 19 years, then such a target should be clearly stated. Although an additional 19 years to achieve water quality is longer than our citizens should have to wait for clean water, a firm target for developing and implementing nonpoint source controls is clearly needed to make the program viable. This point should be clarified and corrected.

The history of the Clean Water Act is to take steps to improve water quality, reevaluate the results, and then take whatever additional steps are determined to be necessary to meet the goals of the Act. That is why the Act has been revisited for amendment approximately each 5 years. Unfortunately for the interests of achieving water quality through reducing nonpoint source pollution, the bill would not build upon the efforts of the past 5 years in addressing nonpoint source pollution in coastal areas, but instead would repeal the coastal water quality protection program of the Coastal Zone Amendments and Reauthorization Act (CZARA). This is a retreat from a commitment to improving water quality, and a retreat from H.R. 961 as introduced, which did not contain such a repeal.

The bill's sponsors have argued that they do not support reduced protection of coastal waters but rather have taken the CZARA program and folded it into the Clean Water program. What they have done is repealed a program which shows promise of being effective, and made it a part of a program which has been marked by its ineffectiveness. And, contrary to the stated goal of working to address the wishes of the states, the bill ignores the desires of the Coastal States Organization, the organization of state agencies which would implement the CZARA program, which has specifically requested that the CZARA nonpoint program *not* be repealed.

The bill proponents again have given in to the interests of those contributing to coastal pollution rather than demonstrate a commitment to improved coastal water quality. Rather than fold an effective coastal program into an ineffective national program, the bill should be exploring ways to upgrade an ineffective national program to more closely resemble the stronger coastal program.

This repeal of CZARA is yet another example of the trend in the bill which adheres to the desires of the states when it is in the in-

terest of the polluter, but ignores the desires of the states if the states' interests are contrary to the desires of the polluter. If the authors of the bill truly support achieving water quality standards, the CZARA program is the model—the states and EPA know it, and water quality needs require it.

The repeal of the CZARA nonpoint program and the lack of a clearly stated date by which programs are to result in the attainment of water quality standards are not the only shortcomings of the nonpoint provisions. Additionally, the terms of the program are designed around inaction and exception, with too many opportunities for water quality goals not to be met.

From the outset, Clean Water Act programs have been focusing on point source pollution. That was the sensible and appropriate approach to water quality improvement in the past, because the most serious water pollution problems were caused by industrial and municipal discharges. Over the years, our efforts have produced significant beneficial results, as most of the major point source problems were being addressed.

Now the Clean Water Act programs are at strategic crossroads. One option is to continue the current approach of relying on point source reduction for water pollution cleanup. Supporters of this approach would point to previous successes as the reason for maintaining the same approach.

There is little dispute that efforts in the past two decades have led to much improved water quality and a cleaner aquatic environment. But the substantial improvement from our persistent long-term efforts also means that the law of increasing cost may be setting in. Henceforth, even modest additional improvement in water quality from further reducing point source pollution may come only with a big price tag. Those same improvements could be achieved at far lower cost by taking moderate steps to reduce nonpoint pollution.

In addition to the efficiency consideration is the question of equity. Is it fair to ask industrial and municipal dischargers to continue to foot the lion's share of the bill, when the majority of the water pollution problem today is no longer point source in nature? The answer is clearly "no."

So if we are attempting to get the "biggest bang for the buck," this strategy of continually relying on reducing point source discharges to improve water quality is destined to produce inefficient and inequitable results.

We should recognize that the majority of our water pollution problems is now arising from nonpoint sources, with agriculture being the biggest contributor. Greater water quality improvement would be achieved if point source and nonpoint source dischargers would pay their fair share of the total cost of water pollution control. This alternative would ask nonpoint source dischargers to play a larger role in water quality improvement than they have heretofore been required to do. But the result would be greater equity among all dischargers, lower total cost, and greater efficiency in improving water quality.

Thus, for equity and efficiency reasons, shifting the burden toward a better balance between point source and nonpoint source

dischargers is the preferred approach. It makes economic, equity, and environmental sense.

Water pollution control is a zero sum game. For every individual who does not contribute to the reduction in pollutant loadings, some other individual will have to increase the reduction which that individual might otherwise have been expected to carry out.

For example, the principal sources of nutrients (the number 2 cause of water quality impairment in rivers and lakes, and the number 1 cause in estuaries) are municipal sewage treatment plants and agricultural runoff. Municipal plants are point sources and agriculture is generally a nonpoint source. If effective reduction in nutrients is to occur, then reductions must come from one or both of these major sources.

Municipalities have participated in reducing nutrients for over 20 years. Over $60 billion in federal investment and an equal amount of nonfederal investment have greatly reduced nutrient loading from municipalities, and additional steps are increasingly expensive to accomplish. For municipal discharges, we have invested heavily at all levels of government, and the easy pollutants have been mostly addressed.

In the meantime, agriculture has been asked to contribute very little to reducing nutrient loadings from its activities. Meanwhile, the states indicate that agriculture is a source of impairment for 72% of impaired river miles. But municipal point sources account for impairment of only 15% of river miles. Clearly there is a message that meaningful reductions in nutrient loadings will have to come in part from agriculture, and not just from municipalities.

Such a shift in burden-sharing is consistent with the current discussions about the need to make decisions based upon sound economics (benefit-cost analysis, sound science, and risk assessment). The failure to effectively address nonpoint pollution from agriculture certainly will result in additional expenditures by municipalities which are unjustified and a misallocation of resources. That is why the bill's enormous exemptions for agricultural activities, exemptions which a state could not override even if it is chose to, are so objectionable.

Again, it appears as though the bill is more interested in assuring that polluters not be brought to the table than it is in being responsive to water quality needs, or in even being consistent in its application of sound scientific and economic principles. Where the polluter would benefit from benefit-cost analysis, the bill includes it. Where benefit cost analysis would be to the detriment of a class of polluters, the bill ignores benefit-cost. The application of cost-benefit principles would dictate a more effective nonpoint program, and would not require expensive additional requirements upon municipalities.

The bill creates an entire class of exemptions from state nonpoint source programs for any producers who is implementing a whole farm or ranch natural resources management plan. These plans are underfined in the Clean Water Act context, and largely undefined even within the agriculture programs. There is no mention in the provision about the ability of a state to want to require more than what might be in such a plan—participation is compliance. There are not requirements than improvements in water quality be a con-

sideration in the plan, there are no standards by which these plans will be evaluated.

Under the bill, the participation in a whole farm plan, a plan which has no requirements to include water quality components, will effectively exempt agricultural producers from taking any additional steps to achieve water quality—regardless of how necessary such steps may be. By requiring states to allow whole farm plans to serve as compliance with a state's nonpoint source control program, a state will not have sufficient flexibility to achieve water quality standards by 2014, if that is the intent of the section. State programs are to be evaluated by EPA to determine whether the program is resulting in reasonable further progress toward the goal of attaining water quality standards by 2014.

Under the concessions to agricultural producers in allowing whole farm plans to serve as compliance, a state would not have the ability to require more from these producers, even if the state program was not making progress. This will unnecessarily hamper the efforts of states in achieving environmental results, and all because the bill is overly concerned with excepting agriculture from Clean Water Act requirements rather than developing an effective partnership with these interests.

A viable alternative to this approach would be to allow participation in established agriculture programs such as Swampbuster, Sodbuster, or the like to operate as compliance to the extent that water quality is addressed within that program. This would result in meaningful standards to be used in evaluating programs, and for there to be assurances that the programs have water quality protection as a component. Even whole farm planning could be used as a tool for the states, but there would have to be water quality components built into the programs, and states would have to have the ability to require more of an individual producer should water quality needs dictate it.

Such features are lacking in the bill's provisions, and make the section unacceptable.

Finally, the bill establishes as a new test of determining compliance with environmental protection, the amount of federal assistance which is provided. The bill states that the amount of federal financial assistance will be taken into account in determining whether a state's program is demonstrating reasonable further progress toward the attainment of water quality standards. Additionally, the requirements on states for assessments, program implementation and monitoring are all to be delayed one year for each year that the federal appropriation for nonpoint programs falls even $1 short of the amount authorized.

These concepts of linking Clean Water Act goals with federal funding are troubling for three reasons. First, the Clean Water Act has never been a fully federally funded program. The federal government has chosen to participate in the funding of clean water activities, but the responsibility to not pollute exists independent of whether the federal government chooses to assist in that effort. People expect that their neighbors will not pollute them, and should not be expected to pay to have those expectations fulfilled.

Second, Clean Water programs are a federal-state-local and private-public partnership. States, municipalities, and private indus-

tries expect a reasonable return on their pollution control investments, which can be realized only if there is certainty about the progress of the programs. Unilateral alteration of the programs, such as postponement of compliance deadlines by the states due to less-than-full federal funding for nonpoint pollution programs, undermines that certainty and may deprive the non-federal partners of the legitimate returns on investment they expect.

Third, those who would advocate that there must be federal funding or there will be no nonpoint source control program act as though the only people who are interested in clean water in this country are "pointy-headed bureaucrats" in Washington. Nothing could be further from the truth.

Our constituents demand and expect clean, healthy waters. Will polluters incur some costs in controlling pollution? Of course they will. But, to argue that the only reason to do so is because somebody requires it misses the whole point. Tourism and recreation are multi-billion dollar industries. Likewise the commercial fishing industry depends upon clean water to assure a safe and abundant supply for markets. Job growth in many firms similarly requires a reliable supply of clean water.

The reason we need effective programs in this country to control water pollution is not because some faceless bureaucrat determined that it should be so. It is because the people of this country demand and expect it. The nonpoint source provisions of the bill will perpetuate our not achieving the water quality goals of our constituents. It is therefore unacceptable.

STORMWATER

Urban runoff from storm sewers is the second leading cause of water quality impairment in lakes and estuaries, and the third leading cause in rivers. Despite this evidence, H.R. 961 as approved by the Committee will reduce the controls currently in place to reduce pollutant loadings from stormwater, and will make it more difficult to ever achieve water quality goals.

The current stormwater program is clearly in need of repairs. Municipalities need to have the law clarified so that municipal stormwater discharges are not required to meet numeric limitations in their stormwater. There should also be no current requirement that permits for stormwater discharges be water quality based. Instead, municipalities should be expected to put in place a system of management practices and measures which will reduce stormwater related pollutant loadings. Such efforts, coupled with effective monitoring and analysis of water quality, will allow individual municipalities to tailor their programs over time to meet the water quality needs of the receiving waters.

The new stormwater program of the bill is on the right track in that most of the responses to municipal stormwater will be related to the same types of measures which might be used to control nonpoint source pollution. Where the bill is seriously flawed is that it eliminates the valuable aspects associated with a permit process, thereby eliminating information which is necessary to make valid judgements about future actions; and, it virtually eliminates controls on stormwater associated with industrial activity, which unlike municipalities, has control over the area and pollutants likely

to be included in stormwater. The bill also does not include a clearly stated date by which stormwater management programs are to contribute to the attainment of water quality standards. Finally, the bill requires states to conduct new assessments and create new stormwater management programs, even in those states where EPA is the current permitting agency.

This new program is one of the true contradictions contained in the bill. Although the bill is touted as increasing state flexibility in addressing water pollution, the new pollution program not only mandates that all states create new programs for stormwater, it is rigid and inflexible in the way that it restricts the ability of states to address stormwater. Once again, the emphasis of this bill is that when it is in the interest of the polluter to be flexible, the bill does so; where it is in the interest of the polluter to be inflexible, the bill does so. Flexibility is not the consistent theme of this bill; the interest of the polluter is.

The framework of a permitting program for stormwater should be retained, and states should have the flexibility to more effectively address stormwater discharges should they choose to do so.

The proponents of the bill argue that it costs an average of over $600,000 to prepare an application for a stormwater permit under the current law, and that therefore the permit program should be scrapped. This position is incorrect on two counts. First, the costs cited are inflated with costs not directly related to the permit application. Second, many of these costs are one-time costs which will not be repeated in subsequent permit applications and have already been paid.

The bill changes the definition of a point source so that it does not include stormwater discharges. This is regardless of the size of the discharge (many stormwater discharges are millions of gallons) and regardless of the pollutants present in the discharge. Under this new program, point source discharges which are highly toxic and susceptible of treatment, and which are currently being treated, may no longer have to undergo treatment which has already been demonstrated to be economical and achievable.

This redefinition and relaxation of stormwater pollution controls is clearly a reduction in water quality protection. It clearly contemplates reduced levels of control. That is evident from the terms of the provision itself in that it has to specifically state that actions taken to convert from the current stormwater system to the new program are not to be subject to the anti-backsliding provisions of the Act. If back-sliding were not intended for currently permitted activities, there would be no need for such protection.

By eliminating the monitoring features associated with a permit program, the bill eliminates the availability of valuable information for making future decisions. A permitting program allows for monitoring of the discharge to determine what constituents are present in the discharge. Contrary to the apparent belief that monitoring will lead to increased controls, it is also likely that monitoring can reveal that no additional controls are necessary, thereby avoiding the implementation of measures when measures are not necessary.

Municipalities need to have the permitting program fixed, they do not need to have the program eliminated.

As disturbing as the bill's provisions are on municipal stormwater discharges, what the bill would do concerning industrial, mining, and oil and gas activities is an abandonment of any effective measures to reduce the impacts of stormwater from nonmunicipal sources. Under the bill, industrial sources of stormwater may have purely voluntary programs in several instances. The bill's proponents argue that the remainder will have enforceable stormwater pollution prevention plans, but the missing piece of the puzzle is the details of the plans.

These plans include such ineffective requirements as the creation of a pollution prevention team, annual inspections and annual visual stormwater discharge inspections. There is no monitoring of what is in the stormwater. there are also no limits on what may be present in the stormwater. The types of steps which must be taken include "good housekeeping" and employee training. While these steps can be the basis for the implementation of a successful plan for plant management, they cannot form the sole basis for effectively controlling stormwater pollution from in industrial sites.

Municipalities have argued that they cannot control everything which might be discharged through their stormwater system. Therefore, municipalities argue that they should not be expected to be able to achieve numeric limits or water quality based permitting. On this there is agreement. However, industrial concerns can control what is present on their site. They can control the finite amount of area which a private concern entails. And, they can control what their employees allow to be discharged through stormwater. Because of the complex nature of the pollutants which might be present at an industrial site, it is appropriate to require monitoring of the discharge, to require permitting and, if necessary, to require that the pollutants present in the discharge be treated to meet the requirements of the Act the same as any other point source discharge.

This bill will allow currently treated stormwater to be discharged without treatment, which is a significant rollback of existing law, and will exacerbate the water quality impairment associated with stormwater. It is intellectually dishonest to treat stormwater discharges from industrial facilities as anything other than what they are—point source discharges. Should EPA or the states determine that it is possible to control pollutant loadings from industrial stormwater through management practices rather than treatment, that is perfectly acceptable. But, it should be done within the permit program.

A permitting program also aids in holding dischargers accountable for their actions. The bill only includes a self-certification method for compliance. Such self-certification operates to excuse an industrial facility from any permit requirements, any analytical monitoring, any effluent limitation or other numeric standards—apparently even if there are adverse water quality impacts.

The bill also adds as a component of whether a state is making progress in achieving water quality goals a requirement that the adequacy of federal funding be taken into account. In one instance, the standard is whether the federal funding has matched the authorized amount. If it has not, then compliance with water quality

standards is delayed by one year—even if the appropriation is only $1 short.

In another instance, the demonstration of reasonable further progress by which a state program is to be judged is to take into account the adequacy of federal funding under the section. Since the only federal funding under the section is $20 million annually for 5 years for demonstration projects, it appears that federal funding will always be inadequate to meet the needs under the section. Therefore, the bill appears to allow for virtually any progress to be sufficient to meet the tests under the new section. This will result in indefinite delay in addressing stormwater pollution, and indefinite delay in meeting water quality standards where stormwater is a major factor in not achieving such standards.

The weakness of the stormwater provision underscores the bill's abandonment of the commitment to move steadily forward in achieving acceptable water quality. Until we are prepared to take necessary steps to address precipitation-induced pollution, we cannot claim to be working effectively toward the water quality needs which our constituents expect.

RISK ASSESSMENT AND BENEFIT-COST ANALYSIS

H.R. 961 requires elaborate risk assessment and benefit-cost analysis to be performed before regulations to protect clean water can be issued. Supporters of the bill argue that the House has already adopted H.R. 1022, the risk assessment bill, and that provisions in H.R. 961 are consistent with those in H.R. 1022. But H.R. 961 in fact goes well beyond the House-passed risk assessment bill in three specific areas to include provisions that are more extreme and onerous.

First, the bill requires EPA and the Corps of Engineers to conduct *comparative* risk analysis. Instead of providing relevant information that could help improve regulatory decisionmaking or enhance understanding by the public, it would lead to confusion and mistakes.

We face many different risks every day. But there are fundamental differences in their nature, even among risks affecting human health or the environment. Some risks we assume voluntarily, and we are willing to accept higher thresholds. Other risks we are asked to assume involuntarily, and our tolerance of those risks is correspondingly low. Comparing dissimilar kinds of risk, therefore, would be comparing apples and oranges.

Furthermore, each federal agency tailors its risk assessment methodology according to the risks it regulates. In the process, it acquires knowledge of those risks and develops expertise about how to control them. Comparing risk assessment results produced by different methodologies is a recipe for drawing misleading conclusions that would simply create confusion, and not greater clarity that would help rational decisionmaking.

Finally, requiring EPA and the Corps of Engineers to compare risks that they know something about, such as the health effects of toxics in water of flooding due to filling of wetlands, with those about which they know nothing, such as auto accidents on highways or airplane accidents, would inevitably cause EPA and the Corps to make mistakes which, in turn, could lead to an explosion

of legal challenges to the validity of comparative risk analyses that the agencies are mandated to conduct.

H.R. 1022 takes these important complications into account and, accordingly, limits risk comparisons to those involving similar risks that are regulated by the same federal agency. The same limitations, however, are not included in H.R. 961.

Second, H.R. 961 contains an unfair look-back provision that requires a retroactive review of regulations issued prior to the bill's enactment. The goal of this provisions is very similar to that of the Barton amendment to H.R. 1022 offered on the House floor. The amendment would permit an individual aggrieved by a regulation to petition the agency to conduct a review, which would be undertaken only if the petition is supported by substantial evidence. The issue was debated at length. But even with the safeguards, the amendment was rejected by the House because it would overwhelm the regulatory process in general and to new risk assessment procedures in particular.

The look-back provision in H.R. 961 is far more damaging then the rejected Barton amendment because it lacks those safeguards. Without a doubt, it would be damaging to water quality protection and to the regulatory process which protects water quality. An existing regulation has already once gone through public notice and comments, as well as vigorous internal analysis (including risk assessment and benefit-cost analysis for major regulations), review, and deliberation. The regulation is now final, yet is still subject to judicial review under the "arbitrary and capricious" standards of the Administrative Procedures Act. Retroactively reviewing regulations that have been finalized, therefore, is patently unfair. It amounts to changing the rule after the game is over and having the game played over again under new rues in hope of a different outcome. Any new risk assessment and benefit-cost analysis requirements should apply prospectively, affecting only future regulations, and not retroactively that would undermine delicately balanced regulations that have already been issued.

The Great Lakes Water Quality Initiative is a good case in point. The final program plan was issued on March 13, 1995. As such, it would be subject to the retroactive review requirements of the bill. It is the culmination of a 6-year collaborative effort involving state environmental agencies, industry, environmental and other public citizen groups, municipalities, academia, and EPA. EPA alone has devoted 90 staff-years and $1.5 million in contract funds to the effort. EPA's partners have spent millions more. The plan has already under gone rigorous risk assessment and benefit-cost analysis. Yet this bill would require that the entire effort be repeated one more time, thus wasting taxpayer's and industry's money, creating uncertainty about the program, and postponing environmental cleanup What real benefit can society expect from such a redundant exercise?

Third, H.R. 961 sets up an unworkable system to evaluate environmental regulations because the underlying economic analysis is useless, the attendant concepts meaningless, and the needed information inaccurate, unreliable or unavailable. The bill establishes as a national policy goal that water quality protection programs "maximize net benefits to society." To ensure that a given regula-

tion would indeed achieve maximum net benefits, the bill mandates that it undergo a benefit-cost analysis. The bill further stipulates that, as part of the analysis, "incremental benefits and costs associate with plausible alternatives" be estimated.

This is the standard approach to economic analysis, in which the marginal (incremental) benefit and cost are measured. Maximum total profit is obtained at the production level where marginal benefit equals marginal cost. The marginal analysis is designed to evaluate private manufacturing decisions. It is ill-suited to evaluating environmental regulations, however.

Private manufacturing decisions are usually made where the product is unique and only the output quantity is changed to determine the manufacturing level that maximizes profit. Moreover, benefits, such as revenue and profit, and costs are easily quantified and monetized (measured in monetary terms). The marginal analysis works well in this neat situation.

Public environmental standard-setting and rulemaking operate in a vastly different situation, and are characterized by two complications; first, alternatives are often distinct from one another in terms of basic approach and, therefore, fundamental nature; second, benefits—and often costs, too—are very difficult to quantify or monetize.

Marginal analysis is virtually useless in this situation, because the choice is not about expanding or contracting the scope of a particular pollution control measure (to do more or less of the same thing) in order to maximize net benefits. If obtaining maximum net benefits is the goal, then the analysis would have to entail determining the net benefit of each of the identified pollution control measures and choosing the one with the largest net benefit. "Incremental benefits and costs associated with plausible alternatives," even if it is possible to calculate them, are meaningless when the analysis involves jumping from one alternative to another the fundamental nature of which is entirely different.

The bill does require the estimation of "total social, environmental, and economic costs" of options. But it leaves out the estimation of corresponding total benefits. With only half of the needed information available, determining the net benefit of each alternative is impossible.

But adding a requirement of estimating the total benefits to the bill still will no solve the problem because we lack the ability to quantify and monetize benefits (in particular) and costs accurately and reliably. H.R. 1022 adopts a more flexible standard, requiring that benefits would likely "justify, and be reasonably related to," costs. H.R. 961, in contrast, adopts an inflexible and for more stringent standard in two respects. First, it requires that benefits not merely justify costs, but that they exceed the costs, and second, only the option with the greatest net benefits may be selected for the final regulation. This maximum net benefits standard presupposes a level of measurement precision that presently does not exist.

Benefit-cost analysis is simply incapable of providing answers to a host of waxing questions necessary to ascertain the net benefits of various environmental regulatory options. How many lives would be saved or injuries avoided by each of the regulatory alternatives?

What is the tradeoff between developmental disabilities and mortality (or say, how many IQ points among children equal one adult cancer death)? What is the tradeoff between human health benefits and environmental benefits (for example, between birth defects and flood mitigation)? At the base is the question of how much each of these benefits or costs is worth.

It is simply wrong to suggest that benefit-cost analysis, though a very useful economic evaluation tool, is able to come up with all the answers at a level precise enough to pick the winning option all the time. But the decision criterion of "maximum net benefits to society" provided in the bill is predicated on the mistaken premise that benefit-cost analysis is precise enough to do the job.

Beyond the analytical difficulties are jurisdictional obstacles, which will make it impossible for EPA or the Corps to satisfy the certification requirement that a regulation indeed maximizes the net benefits to society. This issue has implications which cut across pollution media and agency domains. For example, it is difficult enough for EPA to ascertain if a particular water quality problem should be tackled directly through clean water programs or indirectly through clean air programs. The maximum net benefits standard requires an evaluation of all plausible alternatives, many of which are administered by other federal or state agencies. EPA will have little knowledge of, and certainly no control over, these other programs. EPA, therefore, cannot possibly meet the certification requirement under this provision of the bill.

Additionally, the system established in this bill to evaluate regulatory requirements creates the so-called supermandate that not only allows economics to juxtapose on science in environmental regulation, it demands that economics overrule science. If there is a conflict, the bill stipulates that the economic decision criterion supersedes other decision criteria that are based on health or water quality requirements. Unfortunately, as indicated above, benefit-cost analysis is not up to the task. However strong is the urge, it is ill-advised to expect the impossible from benefit-cost analysis, and fantasy to pursue the unrealistic standard of maximum net benefits.

Finally, the regulatory evaluation system in the bill changes the "arbitrary and capricious" standard by which a court reviews an agency's final action to the higher "substantial evidence" standard. So instead of reviewing the agency's record as a whole to determine if the agency's action is arbitrary and capricious, the bill would have the court delve into whether the chosen option maximizes net benefits to society. The inquiry would mire the courts in complex technical debates, a role that judges themselves have said is inappropriate.

In sum, the above requirements under the risk assessment and benefit-cost analysis provisions of the bill, some of which go beyond those found in H.R. 1022, guarantee that regulatory waste and inefficiency will increase, that litigation and delay will multiply, and that gridlock and paralysis will become much more pervasive.

TRADEOFF BETWEEN ECONOMY AND ECOLOGY

Supporters of the bill argue that we have gone too far in protecting water quality, and that overly restrictive environmental laws

are harming our economic wellbeing. Their argument can be summarized as follows: environmental protection would raise the cost for our producers, which would make our products uncompetitive on the international market and ultimately would lead to reduced employment, especially high-paying manufacturing jobs. Their conclusion is that we should not do any more to improve water quality or our environment. Quite the opposite, we should roll back environmental standards to help spur the economy.

Implicit in this argument is an alleged tradeoff between the environment and the economy. Such a tradeoff is much talked about, but it is simply not true.

The suggestion that environmental cleanup costs jobs has repeatedly been refuted by academic analyses. Empirical findings have consistently shown that a cleaner environment is actually good for the economy—strong environmental standards go hand in hand with a vibrant economy and strong environmental regulation is associated with job growth.

For example, Stephen Meyer of MIT tested the "environmental impact hypothesis"—the assertion that rigorous environmental management hurts economic growth and development—and found it to be wrong. In two separate reports, one in 1992 and another in 1993, Professor Meyer concluded that "the U.S. record of the past two decades clearly and unambiguously refutes the environmental impact hypothesis at the state level." "States with stronger environmental standards tended to have higher growth in their gross state products, total employment, construction employment, and labor productivity than states that ranked lower environmentally." And not even in bad economic times did environmental requirements prove to be a drag on economic recovery. He cautioned "those who * * * are now contemplating rolling back environmental standards as a quick fix to jump-start their economies out of recession should reconsider. Based on the evidence there is no reason to expect that loosening environmental standards will have any effect on the pace of state economic growth."

Similar results at the national level were found by Eban Goodstein of Skidmore College. He stated in a 1994 report that "environmental regulation is not responsible for the long-term decline of manufacturing employment in the U.S. * * * Firms are relocating, but the overwhelming reason is lower labor costs. As for the net effect of environmental regulation on the rate of growth of productivity, its impact has been quite small and, indeed, may have been positive." Updating a 1978 study, he estimated that "we might expect gains on the order of 5,000 to 10,000 net jobs per billion dollars of expenditure on environmental protection measures."

Most recently, the National Commission for Employment Policy issued two reports in April 1995 that show "the environmental policy versus jobs tradeoff is not the obvious conflict that some would assume." The analysis found an average gain of 17,000 to 20,000 gross jobs per billion dollars of environmental investment. Recognizing that environmental policies are driving technological advance through investments in efficiency and productivity, the authors identified three clear winners from environmental initiatives. "The first is the people and families who benefit from the new employment opportunities. The second is the economy in general since

productivity investments would drive up per capita income. The third is the environment as reduced volumes of waste and higher energy efficiencies mean fewer pollutants."

Notwithstanding the scientific evidence which has been accumulating for almost two decades, and which has consistently pointed to the contrary, supporters of this bill have continued to use the faulty tradeoff rhetoric to buttress their claim that rollbacks, waivers, loopholes, and exemptions are needed to save our industries, our communities, and our economy. But these studies, which are just a few examples of a large body of scientific analysis, should lay to rest the baseless claim that environmental protection is bad for jobs, bad for business, and bad for the economy. Repeating a falsehood often and loudly is simply not sufficient to turn it into the truth.

CONCLUSION

The Clean Water Act is a success story in environmental law. Unfortunately, H.R. 961 as reported by the Committee will not build upon that legacy. Instead, the bill rolls back requirements and creates new ways to introduce additional pollutants into the Nation's waters. This is not what the American people want or expect—it is only what the polluters want.

The preceding pages do not discuss all of the flaws of the bill, but they are an indication of the breadth and seriousness of the potential problems of the bill. This bill should be reconsidered by the Committee and the Congress before the House takes action upon it. In the absence of such review, this bill should not go forward, and the House should reject it.

JAMES L. OBERSTAR.
ROBERT A. BORSKI.
JERROLD NADLER.
JAMES E. CLYBURN.
BARBARA-ROSE COLLINS.
ELEANOR H. NORTON.
PETER A. DEFAZIO.
NORMAN Y. MINETA.
NICK RAHALL.
BOB WISE,
WILLIAM O. LIPINSKI.
ROBERT MENENDEZ.
CORRINE BROWN.

APPENDIX

EXCHANGE OF LETTERS

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, May 2, 1995.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for the information that the Committee on Transportation and Infrastructure had reported H.R. 961, a bill to amend the Federal Water Pollution Control Act. I believe we can agree that the Committee on Agriculture could be successful in asserting a right to a sequential referral of such bill.

The Committee on Agriculture recognizes the general importance of this legislation. Also, as you know as one of the Committees with jurisdiction over wetlands and other programs related to the activities of the Department of Agriculture, this Committee is interested in the provisions of H.R. 961.

The Committee on Agriculture, in subtitles A and C of the Food Security Act of 1985, and in amendments to those subtitles in the Food, Agriculture, Conservation, and Trade Act of 1990, addressed the issues of wetlands as regards farmers and producers of agricultural commodities. Furthermore, the Committee expects to hold hearings and amend title XII of the Food Security Act of 1985 in the consideration of the 1995 Farm Bill later in this Session.

However, in the interest expediting the consideration of H.R. 961, I do not intend to request a sequential referral of the bill to the Committee. However, I would appreciate receiving assurances that certain of the agreements worked-out between our respective staffs will be effected to our satisfaction without the need for a Floor amendment by this Committee. Meanwhile, my action here is not intended to waive the Committee's jurisdiction over this matter, and should this legislation go to a House-Senate Conference, the Committee on Agriculture reserves the right to request to be included as conferees on any provisions within this Committee's jurisdiction.

Thank you for your cooperation in this matter.

Sincerely,

PAT ROBERTS, *Chairman.*

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, May 2, 1995.

Hon. PAT ROBERTS,
Chairman, Committee on Agriculture, House of Representatives, Longworth Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of May 2, 1995, regarding a bill reported by the Committee on Transportation and Infrastructure, H.R. 961, to amend the Federal Water Pollution Control Act.

I appreciate the interest that the Committee on Agriculture has in this important legislation. As your letter indicates, the Committee could be successful in asserting a right to a sequential referral of H.R. 961. Therefore, I am most appreciative of your decision not to request such a referral in the interest of expediting consideration of the bill.

You have my assurance that agreements worked out by our respective staffs will be included in a manager's amendment as we take the bill to the House floor.

Thank you for your cooperation in this matter and for your support of this legislation.

With kind regards, I am

Sincerely,

BUD SHUSTER, *Chairman.*

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, May 2, 1995.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN SHUSTER: I am writing to thank you for your cooperation in addressing several issues of interest to the Commerce Committee in H.R. 961, the Clean Water Amendments of 1995, which the Committee on Transportation and Infrastructure marked up and ordered reported to the House on April 6, 1995.

With respect to section 409 of H.R. 961, it is the position of the Commerce Committee that, pursuant to Rule X of the Rules of the House, section 409 directly affects provisions of statutes within the Committee's jurisdiction. In particular, section 409 would create a new waste remediation program which may be inconsistent with authorities under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

In view of your desire to move H.R. 961 to the Floor in an expeditious fashion, I do not intend to seek a sequential referral of H.R. 961. However, I would appreciate your acknowledgement of the Commerce Committee's jurisdiction over section 409 and an acknowledgement of the Commerce Committee's right to seek conferees in the event that this legislation is considered in a House-Senate conference. The Commerce Committee will refrain from seeking a sequential referral of H.R. 961 with the understanding

that this action will not in any way compromise the Committee's jurisdiction with respect to any amendments offered to the bill during consideration by the House and with respect to any Senate amendments thereto. I would further request that our exchange of letters on this matter be included in the Committee's report on H.R. 961.

Thank you for your cooperation in this matter. I look forward to working with you in the future, both on this bill and other legislation of mutual interest to our two Committees.

With every good wish,

Sincerely,

THOMAS J. BLILEY, Jr., *Chairman.*

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, May 2, 1995.

Hon. THOMAS J. BLILEY, Jr.,
Chairman, Committee on Commerce, House of Representatives, Rayburn Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of May 2, 1995, regarding H.R. 961, the Clean Water Amendments of 1995, reported by the Committee on Transportation and Infrastructure.

I appreciate the interest that the Committee on Commerce has in this important legislation. As your letter indicates, the Committee could be successful in asserting a right to a sequential referral of section 409, relating to abandoned mines. Therefore, I am most appreciative of your decision not to request such a referral in the interest of expediting consideration of the bill.

You have my assurance that agreements worked out by our respective staffs will be included in a manager's amendment as we take the bill to the House floor. I also recognize your Committee's right to seek conferees on section 409, as currently written in H.R. 961.

Thank you for your cooperation in this matter and for your support of this legislation.

Sincerely,

BUD SCHUSTER, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC, May 3, 1995.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I appreciate the opportunity to review H.R. 961 on behalf of the Resources Committee before the filing of the report by the Committee on Transportation and Infrastructure. Having participated in the three days of markup in the Transportation and Infrastructure Committee on H.R. 961, I understand the need to move this legislation forward quickly to achieve the many reforms made by the bill. Furthermore, I am sure that you share

my concern that without reauthorization, appropriations for vital Clean Water Act programs are in jeopardy.

The Resources Committee has a valid claim to jurisdiction of a number of provisions in H.R. 961. While I do not intend to request a sequential referral, this in no way should be viewed as diminishing the jurisdiction of the Resources Committee. I seek your agreement on four specific jurisdictional items.

First, the Resources Committee recognizes that the Transportation and Infrastructure Committee has primary jurisdiction over the coastal nonpoint pollution program established in section 6217 of the Omnibus Budget Reconciliation Act of 1990. The Resources Committee is entitled to a sequential referral of section 319(n)(1), which repeals section 6217, because it affects programs and activities in its jurisdiction. This does not, however, expand, diminish, or otherwise affect jurisdiction over other nonpoint source water pollution programs.

Second, the Transportation and Infrastructure Committee has primary jurisdiction over the Federal Water Pollution Control Act and, in particular, section 404 relating to wetlands. The Resources Committee has primary jurisdiction over various programs and activities of the U.S. Department of Interior relating to wetlands protection and conservation. The Resources Committee has the right to a sequential referral over provisions of the bill relating to wetlands based on its jurisdiction over fisheries and wildlife.

Third, section 320 of the Clean Water Act establishes the National Estuary program. While the management conferences authorized under that program are principally concerned with water quality matters within the jurisdiction of the Committee on Transportation and Infrastructure, one of the purposes of a management conference is to develop a comprehensive conservation and management plan for the estuary. Because this impacts the Resource Committee's jurisdiction over coastal zone management, the Resources Committee would have an interest in the amendments in section 320 of the bill.

Finally, section 104 establishes a grant program and section 409 establishes a permitting program for remediation of abandoned or inactive mine sites from which there is a discharge of pollutants into the navigable waters. The Surface Mining Control and Reclamation Act of 1977 (SMCRA) establishes a fund and a program for reclamation and restoration of land and water resources adversely affected by past coal mining. The Resources Committee is entitled to a sequential referral of sections 104 and 409 to the extent that they are inconsistent with SMCRA.

It has been an honor to work with you on this legislation and I look forward to continuing to work together as we move the bill through the House.

Sincerely,

DON YOUNG, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE.
Washington, DC, May 3, 1995.

Hon. DON YOUNG,
Chairman, Committee on Resources, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of May 2 regarding H.R. 961, the Clean Water Amendments of 1995. I appreciate your cooperation in not insisting on a sequential referral, so that we can proceed expeditiously to take the bill up on the House floor next week.

I agree that the Resources Committee has a valid claim to jurisdiction of a number of provisions in H.R. 961. Specifically, I concur with your statements relating to coastal nonpoint pollution, wetlands, the national estuaries program, and abandoned or inactive mine sites.

Again, thank you for your cooperation and assistance, and I look forward to continuing to work with you as we proceed.

With warm regards, I remain

Sincerely,

BUD SHUSTER, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SCIENCE,
Washington, DC, May 3, 1995.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of May 3, 1995. I understand you concerns about moving expeditiously to reauthorize important Federal water resource programs.

Based on your letter, and your stated willingness to work together to address any differences the Science Committee may have with the provision of the bill outlined in your letter, I have informed the Speaker of the House of Representatives that the Science Committee is no longer requesting a sequential referral on H.R. 961, the Clean Water Amendment of 1995.

As I informed the Speaker, the Science Committee has a valid jurisdictional claim to a number of the provisions in H.R. 961. The Committee continues to maintain these jurisdictional claims and its willingness to forgo a sequential referral on the bill should in no way be construed as a waiver of its jurisdiction.

Thank you again for your letter. I look forward to working with you to address any difference our two Committee's may have concerning provision in H.R. 961 over which we share jurisdiction.

Cordially,

ROBERT S. WALKER, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, May 3, 1995.

Hon. ROBERT WALKER,
Chairman, Committee on Science, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your expeditious consideration of H.R. 961, the Clean Water Amendments of 1995. This bill makes important reforms in the Clean Water Act and has strong bipartisan support as well as the support of a broad coalition of state and local officials and business and agriculture groups. It is important that we not have sequential referrals on this bill so that we can proceed to the House Floor next week.

The Science Committee has a valid jurisdictional claim to a number of the provisions in H.R. 961. I understand that you will withdraw the referral request for the Science Committee on this bill. I agree that this in no way should be viewed as a waiver of the Science Committee's jurisdictional claims to the bill. We will support your request for conferees on matters within your jurisdiction.

Under Rule X, 1(n) of Rules of the House of Representatives, the Science Committee has jurisdiction over "all bills, resolutions, and other matters relating to . . .

"(4) Environmental research and development."

"(5) Marine research."

Specifically, the Committee on Science has jurisdiction over the following provisions of H.R. 961:

Section 102, Research, Investigations, Training, and Information, amends Section 104 of the Federal Water Pollution Control Act. Section 104 includes water quality research and historically has been within the Science Committee's jurisdiction.

Section 107 (a) establishes the Great Lakes Research Council. Section 107 (d)(1) authorizes appropriations which are available for research, among other things.

Section 320, National Estuary Program, to the extent that the funding authorized by this section is available for Section 320 (j), Research.

Section 323, Risk Assessment and Disclosure Requirements, to the extent that it prescribes the contents of risk assessments.

Section 702, John A. Blatnik National Fresh Water Research Laboratory, renames a water research laboratory established under Section 104 (e) of the Federal Water Pollution Control Act (33 U.S.C. 1254 (e)). The laboratory is in an environmental research facility and falls within the jurisdiction of the Science Committee.

Again, I appreciate your cooperation and expeditious consideration of this matter and I look forward to continuing to work with you on this bill.

With warm regards, I remain

Sincerely,

BUD SHUSTER, *Chairman.*

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