

103D CONGRESS
1ST SESSION

S. 171

AN ACT

To establish the Department of Environmental Protection, provide for a Bureau of Environmental Statistics and a Presidential Commission on Improving Environmental Protection, and for other purposes.

103^D CONGRESS
1ST SESSION

S. 171

AN ACT

To establish the Department of Environmental Protection, provide for a Bureau of Environmental Statistics and a Presidential Commission on Improving Environmental Protection, and for other purposes.

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

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Department of Environmental Protection Act of 1993”.

1 (b) TABLE OF CONTENTS.—The table of contents is
2 as follows:

Sec. 1. Short title and table of contents.

TITLE I—ELEVATION OF THE ENVIRONMENTAL PROTECTION
AGENCY TO CABINET LEVEL

- Sec. 101. Short title.
- Sec. 102. Findings.
- Sec. 103. Establishment of the Department of Environmental Protection.
- Sec. 104. Assistant Secretaries.
- Sec. 105. Deputy Assistant Secretaries.
- Sec. 106. Office of the General Counsel.
- Sec. 107. Office of the Inspector General.
- Sec. 108. Small business compliance assistance.
- Sec. 109. Small governmental jurisdiction compliance assistance.
- Sec. 110. Bureau of Environmental Statistics.
- Sec. 111. Grant and contract authority for certain activities.
- Sec. 112. Study of data needs.
- Sec. 113. Miscellaneous employment restrictions.
- Sec. 114. Termination of the Council on Environmental Quality and transfer of functions.
- Sec. 115. Administrative provisions.
- Sec. 116. Inherently governmental functions.
- Sec. 117. References.
- Sec. 118. Savings provisions.
- Sec. 119. Conforming amendments.
- Sec. 120. Additional conforming amendments.
- Sec. 121. Sense of the Senate.
- Sec. 122. Office of Environmental Justice.
- Sec. 123. Human health and safety or the environment final regulations.
- Sec. 124. Wetland determinations by a single agency.

TITLE II—ESTABLISHMENT OF THE COMMISSION ON IMPROVING
ENVIRONMENTAL PROTECTION

- Sec. 201. Establishment; membership.
- Sec. 202. Commission responsibilities.
- Sec. 203. Report to the President and Congress.
- Sec. 204. Commission staff.
- Sec. 205. Advisory groups.
- Sec. 206. Termination of Commission.
- Sec. 207. Funding; authorization of appropriations.

TITLE III—EFFECTIVE DATE

- Sec. 301. Effective date.

1 **TITLE I—ELEVATION OF THE EN-**
2 **VIRONMENTAL PROTECTION**
3 **AGENCY TO CABINET LEVEL**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “Department of Envi-
6 ronmental Protection Act”.

7 **SEC. 102. FINDINGS.**

8 The Congress finds that—

9 (1) recent concern with Federal environmental
10 policy has highlighted the necessity of assigning to
11 protection of the domestic and international environ-
12 ment a priority which is at least equal to that as-
13 signed to other functions of the Federal Govern-
14 ment;

15 (2) protection of the environment increasingly
16 involves cooperation with foreign states, including
17 the most highly industrialized states all of whose top
18 environmental officials have ministerial status;

19 (3) the size of the budget and the number of
20 Federal civil servants devoted to tasks associated
21 with environmental protection at the Environmental
22 Protection Agency is commensurate with depart-
23 mental status; and

24 (4) a cabinet-level Department of Environ-
25 mental Protection should be established.

1 **SEC. 103. ESTABLISHMENT OF THE DEPARTMENT OF ENVI-**
2 **RONMENTAL PROTECTION.**

3 (a) REDESIGNATION.—The Environmental Protec-
4 tion Agency is hereby redesignated as the Department of
5 Environmental Protection (hereafter referred to as the
6 “Department”) and shall be an executive department in
7 the executive branch of the Government. The official acro-
8 nym of the Department shall be the “U.S.D.E.P.”.

9 (b) SECRETARY OF ENVIRONMENTAL PROTEC-
10 TION.—(1) There shall be at the head of the Department
11 a Secretary of Environmental Protection who shall be ap-
12 pointed by the President, by and with the advice and con-
13 sent of the Senate. The Department shall be administered
14 under the supervision and direction of the Secretary.

15 (2) The Secretary may not assign duties for or dele-
16 gate authority for the supervision of the Assistant Sec-
17 retaries, the General Counsel, the Director of Environ-
18 mental Statistics, or the Inspector General of the Depart-
19 ment to any officer of the Department other than the Dep-
20 uty Secretary.

21 (3) Except as described under paragraph (2) of this
22 section and section 104(b)(2), and notwithstanding any
23 other provision of law, the Secretary may delegate any
24 functions including the making of regulations to such offi-
25 cers and employees of the Department as the Secretary
26 may designate, and may authorize such successive

1 redelegations of such functions within the Department as
2 determined to be necessary or appropriate.

3 (c) DEPUTY SECRETARY.—There shall be in the De-
4 partment a Deputy Secretary of Environmental Protec-
5 tion, who shall be appointed by the President, by and with
6 the advice and consent of the Senate. The Deputy Sec-
7 retary shall perform such responsibilities as the Secretary
8 shall prescribe and shall act as the Secretary during the
9 absence or disability of the Secretary or in the event of
10 a vacancy in the position of Secretary.

11 (d) OFFICE OF THE SECRETARY.—The Office of the
12 Secretary shall consist of a Secretary and a Deputy Sec-
13 retary and may include an Executive Secretary and such
14 other executive officers as the Secretary may determine
15 necessary.

16 (e) REGIONAL OFFICES.—The Secretary is author-
17 ized to establish, alter, discontinue, or maintain such re-
18 gional or other field offices as he may determine necessary
19 to carry out the functions vested in him or other officials
20 of the Department.

21 (f) INTERNATIONAL RESPONSIBILITIES OF THE SEC-
22 RETARY.—(1) In addition to exercising other international
23 responsibilities under existing provisions of law, the Sec-
24 retary is—

1 (A) encouraged to assist the Secretary of State
2 to carry out his primary responsibilities for coordi-
3 nating, negotiating, implementing and participating
4 in international agreements, including participation
5 in international organizations, relevant to environ-
6 mental protection; and

7 (B) authorized and encouraged to—

8 (i) conduct research on and apply existing
9 research capabilities to the nature and impacts
10 of international environmental problems and de-
11 velop responses to such problems; and

12 (ii) provide technical and other assistance
13 to foreign countries and international bodies to
14 improve the quality of the environment.

15 (2) The Secretary of State shall consult with the Sec-
16 retary of Environmental Protection and such other per-
17 sons as he determines appropriate on such negotiations,
18 implementations, and participations described under para-
19 graph (1)(A).

20 (g) AUTHORITY OF THE SECRETARY WITHIN THE
21 DEPARTMENT.—Except as provided under section 112,
22 nothing in the provisions of this Act—

23 (1) authorizes the Secretary of Environmental
24 Protection to require any action by any officer of
25 any executive department or agency other than offi-

1 cers of the Department of Environmental Protection,
2 except that this paragraph shall not affect any au-
3 thority provided for by any other provision of law
4 authorizing the Secretary of Environmental Protec-
5 tion to require any such actions;

6 (2) modifies any Federal law that is adminis-
7 tered by any executive department or agency; or

8 (3) transfers to the Department of Environ-
9 mental Protection any authority exercised by any
10 other Federal executive department or agency prior
11 to the date of the enactment of this Act, except the
12 authority exercised by the Environmental Protection
13 Agency.

14 (h) APPLICATION TO THE DEPARTMENT OF ENVI-
15 RONMENTAL PROTECTION.—The provisions of this Act
16 apply only to activities of the Department of Environ-
17 mental Protection, except where expressly provided other-
18 wise.

19 (i) ISSUANCE OF PERMITS.—

20 (1) GUIDES.—At the time a person or small
21 business concern (as defined in section 3 of the
22 Small Business Act), including family farms, con-
23 tacts an officer or employee of the Department to
24 obtain a permit to engage in an activity under the
25 jurisdiction of the Department, the Secretary shall

1 make available, on request of the person, an em-
2 ployee of the Department to—

3 (A) act as a guide for the applicant in ob-
4 taining all necessary permits for the activity in
5 the least quantity of time practicable; and

6 (B) facilitate the gathering and dissemina-
7 tion of information with respect to the Federal
8 agencies and departments and agencies of
9 States and political subdivisions of States that
10 have a regulatory interest in the activity to re-
11 duce the period required to obtain all such nec-
12 essary permits.

13 (2) DUTIES OF SECRETARY.—In issuing a per-
14 mit to an applicant to carry out an activity under
15 the jurisdiction of the Department, the Secretary
16 shall—

17 (A) provide assistance and guidance to,
18 and otherwise facilitate the processing of the
19 application for, the applicant; and

20 (B) set reasonable deadlines for action to
21 be taken on an application for the permit.

22 (3) USE OF GUIDES.—An applicant that choos-
23 es to use the services of a guide referred to in para-
24 graph (1) may subsequently choose not to use the
25 services at any time after requesting the guide.

1 **SEC. 104. ASSISTANT SECRETARIES.**

2 (a) ESTABLISHMENT OF POSITIONS.—There shall be
3 in the Department such number of Assistant Secretaries,
4 not to exceed 12, as the Secretary shall determine, each
5 of whom shall be appointed by the President, by and with
6 the advice and consent of the Senate.

7 (b) RESPONSIBILITIES OF ASSISTANT SECRETAR-
8 IES.—(1) The Secretary shall assign to Assistant Sec-
9 retaries such responsibilities as the Secretary considers
10 appropriate, including, but not limited to—

- 11 (A) enforcement;
- 12 (B) compliance monitoring;
- 13 (C) research and development;
- 14 (D) air;
- 15 (E) radiation;
- 16 (F) water;
- 17 (G) pesticides;
- 18 (H) toxic substances;
- 19 (I) solid waste;
- 20 (J) hazardous waste;
- 21 (K) hazardous waste cleanup;
- 22 (L) emergency response;
- 23 (M) international affairs;
- 24 (N) policy, planning, and evaluation;
- 25 (O) pollution prevention;
- 26 (P) congressional affairs;

1 (Q) intergovernmental affairs;

2 (R) public affairs;

3 (S) administration and resources management,
4 information resources management, procurement
5 and assistance management, and personnel and
6 labor relations; and

7 (T) regional operations and State and local ca-
8 pacity.

9 (2) The Secretary may assign and modify any respon-
10 sibilities at his discretion under paragraph (1), except that
11 the Secretary may not modify the responsibilities of any
12 Assistant Secretary without prior written notification with
13 explanation of such modification to the appropriate com-
14 mittees of the Senate and the House of Representatives.

15 (3) One of the Assistant Secretaries referred to under
16 paragraph (1) shall be an Assistant Secretary for Indian
17 Lands and shall be responsible for policies relating to the
18 environment of Indian lands and affecting Native Ameri-
19 cans.

20 (c) DESIGNATION OF RESPONSIBILITIES PRIOR TO
21 CONFIRMATION.—Whenever the President submits the
22 name of an individual to the Senate for confirmation as
23 Assistant Secretary under this section, the President shall
24 state the particular responsibilities of the Department
25 such individual shall exercise upon taking office.

1 (d) CONTINUING PERFORMANCE OF FUNCTIONS.—
2 On the effective date of this Act, the Administrator and
3 Deputy Administrator of the Environmental Protection
4 Agency shall be redesignated as the Secretary and Deputy
5 Secretary of the Department of Environmental Protection,
6 Assistant Administrators of the Agency shall be redesignig-
7 nated as Assistant Secretaries of the Department, the
8 General Counsel and the Inspector General of the Agency
9 shall be redesignated as the General Counsel and the In-
10 spector General of the Department, and the Chief Finan-
11 cial Officer of the Agency shall be redesignated as the
12 Chief Financial Officer of the Department, without re-
13 nomination or reconfirmation.

14 (e) CHIEF INFORMATION RESOURCES OFFICER.—(1)
15 The Secretary shall designate the Assistant Secretary
16 whose responsibilities include information resource man-
17 agement functions as required by section 3506 of title 44,
18 United States Code, as the Chief Information Resources
19 Officer of the Department.

20 (2) The Chief Information Resources Officer shall—
21 (A) advise the Secretary on information re-
22 source management activities of the Department as
23 required by section 3506 of title 44, United States
24 Code;

1 (B) develop and maintain an information re-
2 sources management system for the Department
3 which provides for—

4 (i) the conduct of and accountability for
5 any acquisitions made pursuant to a delegation
6 of authority under section 111 of the Federal
7 Property and Administrative Services Act of
8 1949 (40 U.S.C. 759);

9 (ii) the implementation of all applicable
10 government-wide and Department information
11 policies, principles, standards, and guidelines
12 with respect to information collection, paper-
13 work reduction, privacy and security of records,
14 sharing and dissemination of information, ac-
15 quisition and use of information technology,
16 and other information resource management
17 functions;

18 (iii) the periodic evaluation of and, as
19 needed, the planning and implementation of im-
20 provements in the accuracy, completeness, and
21 reliability of data and records contained with
22 Department information systems; and

23 (iv) the development and annual revision of
24 a 5-year plan for meeting the Department's in-
25 formation technology needs; and

1 (C) report to the Secretary as required under
2 section 3506 of title 44, United States Code.

3 **SEC. 105. DEPUTY ASSISTANT SECRETARIES.**

4 (a) ESTABLISHMENT OF POSITIONS.—There shall be
5 in the Department such number of Deputy Assistant Sec-
6 retaries as the Secretary may determine.

7 (b) APPOINTMENTS.—Each Deputy Assistant Sec-
8 retary—

9 (1) shall be appointed by the Secretary; and

10 (2) shall perform such functions as the Sec-
11 retary shall prescribe.

12 (c) FUNCTIONS.—Functions assigned to an Assistant
13 Secretary under section 104(b) may be performed by one
14 or more Deputy Assistant Secretaries appointed to assist
15 such Assistant Secretary.

16 **SEC. 106. OFFICE OF THE GENERAL COUNSEL.**

17 There shall be in the Department the Office of the
18 General Counsel. There shall be at the head of such office
19 a General Counsel who shall be appointed by the Presi-
20 dent, by and with the advice and consent of the Senate.
21 The General Counsel shall be the chief legal officer of the
22 Department and shall provide legal assistance to the Sec-
23 retary concerning the programs and policies of the Depart-
24 ment.

1 **SEC. 107. OFFICE OF THE INSPECTOR GENERAL.**

2 The Office of Inspector General of the Environmental
3 Protection Agency, established in accordance with the In-
4 spector General Act of 1978, is hereby redesignated as the
5 Office of Inspector General of the Department of Environ-
6 mental Protection.

7 **SEC. 108. SMALL BUSINESS COMPLIANCE ASSISTANCE.**

8 (a) ESTABLISHMENT.—

9 (1) IN GENERAL.—The Secretary of Environ-
10 mental Protection shall establish within the Depart-
11 ment a Small Business Ombudsman Office (here-
12 after in this section referred to as the “Office”). The
13 Office shall be headed by a Director designated by
14 the Secretary.

15 (2) DUTIES.—

16 (A) IN GENERAL.—The Director shall re-
17 port directly to the Secretary. The Secretary,
18 acting through the Director, shall develop and
19 carry out programs of environmental compli-
20 ance and technical assistance for small business
21 concerns (as defined in section 3 of the Small
22 Business Act), including family farms.

23 (B) SPECIFIC DUTIES.—The duties of the
24 Office shall include—

25 (i) providing to small business con-
26 cerns—

1 (I) confidential compliance assist-
2 ance;

3 (II) explanations of environ-
4 mental regulatory requirements; and

5 (III) available environmental re-
6 ports and documents;

7 (ii) assembling and disseminating to
8 small business concerns information on ap-
9 proaches to achieving compliance with en-
10 vironmental laws and improving environ-
11 mental performance and product yield, in-
12 cluding new environmental technologies
13 and techniques for preventing pollution;

14 (iii) carrying out the functions as-
15 signed to the Small Business Ombudsman
16 under section 507 of the Clean Air Act
17 Amendments of 1990;

18 (iv) serving as the Department's liai-
19 son to and advocate for the small business
20 community;

21 (v) ensuring, as appropriate, consider-
22 ation of the concerns of small business in
23 the regulatory development process, includ-
24 ing ensuring that reporting requirements
25 are consistent and avoid unnecessary re-

1 dundancy across regulatory programs, to
2 the extent possible, and ensuring effective
3 implementation of the Regulatory Flexibil-
4 ity Act;

5 (vi) coordinating the Department's
6 small business compliance and technical
7 assistance programs with other Federal
8 and State agencies having responsibilities
9 for carrying out and enforcing environ-
10 mental laws; and

11 (vii) providing assistance in permit-
12 ting, where appropriate.

13 (b) COORDINATION WITH NATIONAL INSTITUTE OF
14 STANDARDS AND TECHNOLOGY.—Not later than 180 days
15 after the date of enactment of this Act, the Secretary of
16 Environmental Protection and the Secretary of Commerce
17 shall enter into such agreements as may be necessary to
18 permit the Department to provide technical assistance and
19 support to the Manufacturing Technology Centers admin-
20 istered by the National Institute of Standards and Tech-
21 nology of the Department of Commerce. Such assistance
22 shall include—

23 (1) preparing environmental assistance pack-
24 ages for small business concerns generally, and

1 where appropriate, for specific small business sec-
2 tors, including information on—

3 (A) environmental compliance require-
4 ments and methods for achieving compliance;

5 (B) new environmental technologies;

6 (C) alternatives for preventing pollution
7 that are generally applicable to the small busi-
8 ness sector; and

9 (D) guidance for identifying and applying
10 opportunities for preventing pollution at indi-
11 vidual facilities;

12 (2) providing technical assistance to small busi-
13 ness concerns seeking to act on the information pro-
14 vided under paragraph (1);

15 (3) coordinating with the National Institute of
16 Standards and Technology to identify those small
17 business sectors that need improvement in environ-
18 mental compliance or in developing methods to pre-
19 vent pollution; and

20 (4) developing and implementing an action plan
21 for providing assistance to improve environmental
22 performance of small business sectors in need of
23 such improvement.

24 (c) COORDINATION WITH OTHER FEDERALLY SUP-
25 PORTED EXTENSION PROGRAMS.—The Secretary of Envi-

1 Environmental Protection may coordinate with other small
2 business and agricultural extension programs and centers,
3 as appropriate, to provide environmental assistance to
4 small businesses.

5 **SEC. 109. SMALL GOVERNMENTAL JURISDICTION COMPLI-**
6 **ANCE ASSISTANCE.**

7 (a) IN GENERAL.—The Secretary of Environmental
8 Protection shall develop and carry out programs of envi-
9 ronmental compliance and technical assistance for small
10 governmental jurisdictions as defined in section 601(5) of
11 title 5, United States Code.

12 (b) SPECIFIC DUTIES.—The duties of the Secretary
13 of Environmental Protection shall include—

14 (1) providing to small governmental jurisdic-
15 tions—

16 (A) compliance assistance;

17 (B) explanations of environmental regu-
18 latory requirements; and

19 (C) available environmental reports and
20 documents;

21 (2) assembling and disseminating to small gov-
22 ernmental jurisdictions information on approaches to
23 achieving compliance with environmental laws and
24 improving environmental performance, including new

1 environmental technologies and techniques for pre-
2 venting pollution;

3 (3) designating liaisons to serve as advocates
4 for small governmental jurisdictions, as appropriate;

5 (4) ensuring, as appropriate, consideration of
6 the concerns of small governmental jurisdictions in
7 the regulatory development process, including ensur-
8 ing that reporting requirements are consistent and
9 avoid unnecessary redundancy across regulatory pro-
10 grams, to the extent possible, and ensuring effective
11 implementation of the Regulatory Flexibility Act;
12 and

13 (5) coordinating the Department of Environ-
14 mental Protection's small governmental jurisdiction
15 environmental compliance and technical assistance
16 programs with other Federal and State agencies
17 having responsibilities for carrying out and enforcing
18 environmental laws; and

19 (6) providing assistance in permitting, where
20 appropriate.

21 **SEC. 110. BUREAU OF ENVIRONMENTAL STATISTICS.**

22 (a) ESTABLISHMENT.—(1) There is established with-
23 in the Department a Bureau of Environmental Statistics
24 (hereafter referred to as the "Bureau"). The Bureau shall
25 be responsible for—

1 (A) compiling, analyzing, and publishing a com-
2 prehensive set of environmental quality statistics
3 which should provide timely summary in the form of
4 industrywide aggregates, multiyear averages, or to-
5 tals or some similar form and include information
6 on—

7 (i) the nature, source, and amount of pol-
8 lutants in the environment; and

9 (ii) the effects on the public and the envi-
10 ronment of those pollutants;

11 (B) promulgating guidelines for the collection of
12 information by the Department required for the sta-
13 tistics under this paragraph to assure that the infor-
14 mation is accurate, reliable, relevant, and in a form
15 that permits systematic analysis;

16 (C) coordinating the collection of information
17 by the Department for developing such statistics
18 with related information-gathering activities con-
19 ducted by other Federal agencies;

20 (D) making readily accessible the statistics pub-
21 lished under this paragraph; and

22 (E) identifying missing information of the kind
23 described under subparagraph (A) (i) and (ii), re-
24 viewing these information needs at least annually
25 with the Science Advisory Board, and making rec-

1 ommendations to the appropriate Department of En-
2 vironmental Protection officials concerning extra-
3 mural and intramural research programs to provide
4 such information.

5 (2) Nothing in the provisions of paragraph (1) shall
6 authorize the Bureau to require the collection of any data
7 by any other Department, State or local government, or
8 to establish observation or monitoring programs. The Bu-
9 reau shall not duplicate the information collection func-
10 tions of other Federal agencies.

11 (3) Information compiled by the Bureau of Environ-
12 mental Statistics, which has been submitted for purposes
13 of statistical reporting requirements of this law, shall not
14 be disclosed publicly in a manner that would reveal the
15 identity of the submitter, including submissions by Fed-
16 eral, State, or local governments, or reveal the identity of
17 any individual consistent with the provisions of section
18 552a of title 5, United States Code (the Privacy Act of
19 1974). This paragraph shall not affect the availability of
20 data provided to the Department under any other provi-
21 sion of law administered by the Department. The con-
22 fidentiality provisions of other statutes authorizing the col-
23 lection of environmental statistics shall also apply, includ-
24 ing but not limited to, section 14 of the Toxic Substances
25 Control Act (15 U.S.C. 2613), section 2(h) of the Federal

1 Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.
2 136h), section 114(c) of the Clean Air Act (42 U.S.C.
3 741(c)), and section 1905 of title 18, United States Code.

4 (b) DIRECTOR OF ENVIRONMENTAL STATISTICS.—
5 The Bureau shall be under the direction of a Director of
6 Environmental Statistics (hereafter referred to as the “Di-
7 rector”) who shall be appointed by the President, by and
8 with the advice and consent of the Senate. The term of
9 the Director shall be 4 years. The Director shall be a
10 qualified individual with experience in the compilation and
11 analysis of environmental statistics. The Director shall re-
12 port directly to the Secretary. The Director shall be com-
13 pensated at the rate provided for at level V of the Execu-
14 tive Schedule under section 5316 of title 5, United States
15 Code.

16 (c) ENVIRONMENTAL STATISTICS ANNUAL RE-
17 PORT.—On July 1, 1995, and each July 1 thereafter, the
18 Director shall submit to the President an Environmental
19 Statistics Annual Report (hereafter referred to as the
20 “Report”). The Report shall include, but not be limited
21 to—

22 (1) statistics on environmental quality includ-
23 ing—

24 (A) The environmental quality of the Na-
25 tion with respect to all aspects of the environ-

1 ment, including, but not limited to, the air,
2 aquatic ecosystems, including marine, estuarine,
3 and fresh water, and the terrestrial ecosystems,
4 including, but not limited to, the forest, dry-
5 land, wetland, range, urban, suburban, and
6 rural environment; and

7 (B) changes in the natural environment,
8 including the plant and animal systems, and
9 other information for a continuing analysis of
10 these changes or trends and an interpretation
11 of their underlying causes;

12 (2) statistics on the effects of changes in envi-
13 ronmental quality on human health and nonhuman
14 species and ecosystems;

15 (3) documentation of the method used to obtain
16 and assure the quality of the statistics presented in
17 the Report;

18 (4) economic information on the current and
19 projected costs and benefits of environmental protec-
20 tion; and

21 (5) recommendations on improving environ-
22 mental statistical information.

23 (d) CONTINUING PERFORMANCE OF THE FUNCTIONS
24 OF THE DIRECTOR PENDING CONFIRMATION.—An indi-
25 vidual who, on the effective date of this Act, is performing

1 any of the functions required by this section to be per-
2 formed by the Director may continue to perform such
3 functions until such functions are assigned to an individ-
4 ual appointed as the Director under this Act.

5 (e) ADVISORY COUNCIL ON ENVIRONMENTAL STA-
6 TISTICS.—The Director shall appoint an Advisory Council
7 on Environmental Statistics, comprised of no more than
8 6 private citizens who have expertise in environmental sta-
9 tistics and analysis (except that at least one of such ap-
10 pointees should have expertise in economics) to advise the
11 Director on environmental statistics and analyses, includ-
12 ing whether the statistics and analyses disseminated by
13 the Bureau are of high quality and are based upon the
14 best available objective information. The Council shall be
15 subject to the provisions of the Federal Advisory Commit-
16 tee Act.

17 (f) REVIEW OF REGULATIONS.—For each proposed
18 new regulation and each proposed change to existing regu-
19 lations the Director shall publish in the Federal Register
20 as part of the notice of the proposed rulemaking, a com-
21 prehensive assessment of specific costs and benefits result-
22 ing from implementation of the proposed new regulation
23 or the proposed regulatory change including an assess-
24 ment of the total number of direct and indirect jobs to
25 be gained or lost as a result of implementation of the pro-

1 posed new regulation or the proposed regulatory change.
2 Such assessment shall be required to the extent that the
3 Department of Environmental Protection is not in compli-
4 ance with any applicable Executive Order requiring an
5 analysis of costs and benefits for proposed regulations
6 submitted to the Office of Management and Budget for
7 review. The assessment required by this subsection shall
8 not be construed to amend, modify, or alter any statute
9 and shall not be subject to judicial review. Nothing in this
10 section shall be construed to grant a cause of action to
11 any person.

12 **SEC. 111. GRANT AND CONTRACT AUTHORITY FOR CER-**
13 **TAIN ACTIVITIES.**

14 The Secretary may make grants to and enter into
15 contracts with State and local governments, Indian tribes,
16 universities, and other organizations to assist them in
17 meeting the costs of collecting specific data and other
18 short term activities that are related to the responsibilities
19 and functions under section 108(a)(1) (A), (B), (C), and
20 (D).

21 **SEC. 112. STUDY OF DATA NEEDS.**

22 (a) STUDY OF DATA NEEDS.—(1) No later than 1
23 year after the start of Bureau operations, the Secretary
24 of the Department of Environmental Protection, in con-
25 sultation with the Director of the Bureau and the Assist-

1 ant Secretary designated as Chief Information Resources
2 Officer, shall enter into an agreement with the National
3 Academy of Sciences for a study, evaluation, and report
4 on the adequacy of the data collection procedures and ca-
5 pabilities of the Department. No later than 18 months fol-
6 lowing an agreement, the National Academy of Sciences
7 shall report its findings to the Secretary and the Congress.
8 The report shall include an evaluation of the Department's
9 data collection resources, needs, and requirements, and
10 shall include an assessment and evaluation of the following
11 systems, capabilities, and procedures established by the
12 Department to meet those needs and requirements:

13 (A) data collection procedures and capabilities;

14 (B) data analysis procedures and capabilities;

15 (C) the ability to integrate data bases;

16 (D) computer hardware and software capabili-
17 ties;

18 (E) management information systems, including
19 the ability to integrate management information sys-
20 tems;

21 (F) Department personnel; and

22 (G) the Department's budgetary needs and re-
23 sources for data collection, including an assessment
24 of the adequacy of the budgetary resources provided
25 to the Department and budgetary resources used by

1 the Department for data collection needs and pur-
2 poses.

3 (2) The report shall include recommendations for im-
4 proving the Department's data collection systems, capa-
5 bilities, procedures, data collection, and analytical hard-
6 ware and software, and for improving its management in-
7 formation systems.

8 (b) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated such sums as necessary
10 to carry out the provisions of this section.

11 **SEC. 113. MISCELLANEOUS EMPLOYMENT RESTRICTIONS.**

12 (a) PROHIBITED EMPLOYMENT AND ADVANCEMENT
13 CONSIDERATIONS.—Except as otherwise provided in this
14 Act, political affiliation or political qualification may not
15 be taken into account in connection with the appointment
16 of any person to any position in the career civil service
17 or in the assignment or advancement of any career civil
18 servant in the Department.

19 (b) REPORTS ON IMPLEMENTATION.—One year after
20 the date of the enactment of this title and again 3 years
21 after the date of the enactment of this title, the Secretary
22 shall report to the Senate Committees on Appropriations,
23 Governmental Affairs, and Environment and Public
24 Works and to the House of Representatives on the esti-
25 mated additional cost of implementing this title over the

1 cost as if this title had not been implemented, including
2 a justification of increased staffing not required in the exe-
3 cution of this title.

4 **SEC. 114. TERMINATION OF THE COUNCIL ON ENVIRON-**
5 **MENTAL QUALITY AND TRANSFER OF FUNC-**
6 **TIONS.**

7 (a) TRANSFER OF FUNCTIONS OF THE COUNCIL ON
8 ENVIRONMENTAL QUALITY.—(1) Except as provided
9 under paragraph (2), all functions of the Council on Envi-
10 ronmental Quality under titles I and II of the National
11 Environmental Policy Act (42 U.S.C. 4321 et seq.) and
12 under any other law, are transferred to the Secretary. The
13 Secretary is authorized to take all necessary action, in-
14 cluding the promulgation of regulations, to carry out these
15 functions.

16 (2) Referrals of interagency disagreements concern-
17 ing proposed major Federal actions significantly affecting
18 the quality of the human environment under section
19 102(2)(C) of the National Environmental Policy Act (42
20 U.S.C. 102(2)(C)) and concerning matters under section
21 309(b) of the Clean Air Act (42 U.S.C. 7609(b)) shall be
22 made to the President for resolution.

23 (b) TERMINATION OF THE COUNCIL ON ENVIRON-
24 MENTAL QUALITY.—(1) Section 204 of the National Envi-
25 ronmental Policy Act (42 U.S.C. 4344) is amended by

1 striking out “Council” and inserting in lieu thereof “Sec-
2 retary of Environmental Protection”.

3 (2) Sections 202, 203, 205, 206, 207, and 208 of
4 the National Environmental Policy Act (42 U.S.C. 4342,
5 4343, 4345, 4346, 4346a, and 4346b) are repealed.

6 (3) The Environmental Quality Improvement Act of
7 1970 (42 U.S.C. 4371 through 4375) is repealed.

8 (4) Section 204 of the National Environmental Policy
9 Act (42 U.S.C. 4344) (as amended by paragraph (1) of
10 this subsection) is redesignated as section 202 of such Act.

11 (5) The heading for title II of the National Environ-
12 mental Policy Act is amended to read as follows:

13 “TITLE II

14 “ENVIRONMENTAL QUALITY REPORT”.

15 (c) REFERENCES IN FEDERAL LAW.—Reference in
16 any other Federal law, Executive order, rule, regulation,
17 or delegation of authority, or any document of or relating
18 to the Council on Environmental Quality—

19 (1) with regard to functions transferred under
20 subsection (a)(1), shall be deemed to refer to the
21 Secretary; and

22 (2) with regard to disagreements and matters
23 described under subsection (a)(2), shall be deemed
24 to refer to the President.

1 (d) AVAILABILITY OF FUNDS.—Unobligated funds
2 available to the Council on Environmental Quality shall
3 remain available to the Department until expended for the
4 gradual and orderly termination of the Council and trans-
5 fer of Council functions as provided in this Act.

6 (e) SAVINGS PROVISIONS.—(1) All orders, determina-
7 tions, rules, regulations, permits, agreements, grants, con-
8 tracts, certificates, licenses, registrations, privileges, and
9 other administrative actions—

10 (A) which have been issued, made, granted, or
11 allowed to become effective by the President, by the
12 Council on Environmental Quality, or by a court of
13 competent jurisdiction, in the performance of func-
14 tions of the Council on Environmental Quality, and

15 (B) which are in effect at the time this Act
16 takes effect, or were final before the effective date
17 of this Act and are to become effective on or after
18 the effective date of this Act,

19 shall continue in effect according to their terms until
20 modified, terminated, superseded, set aside, or revoked in
21 accordance with law by the President, the Secretary of En-
22 vironmental Protection, or other authorized official, a
23 court of competent jurisdiction, or by operation of law.

24 (2) The provisions of this Act shall not affect any
25 proceedings or any application for any license, permit, cer-

1 tificate, or financial assistance pending before the Council
2 on Environmental Quality at the time this Act takes ef-
3 fect, but such proceedings and applications shall be contin-
4 ued. Orders shall be issued in such proceedings, appeals
5 shall be taken therefrom, and payments shall be made pur-
6 suant to such orders, as if this Act had not been enacted,
7 and orders issued in any such proceedings shall continue
8 in effect until modified, terminated, superseded, or re-
9 voked by a duly authorized official, by a court of com-
10 petent jurisdiction, or by operation of law. Nothing in this
11 paragraph shall be deemed to prohibit the discontinuance
12 or modification of any such proceeding under the same
13 terms and conditions and to the same extent that such
14 proceeding could have been discontinued or modified if
15 this Act had not been enacted.

16 (3) The provisions of this section shall not affect suits
17 commenced before the date this Act takes effect, and in
18 all such suits, proceedings shall be had, appeals taken, and
19 judgments rendered in the same manner and with the
20 same effect as if this Act had not been enacted.

21 (4) No suit, action, or other proceeding commenced
22 by or against the Council on Environmental Quality, or
23 by or against any individual in the official capacity of such
24 individual as an officer of the Council on Environmental

1 Quality, shall abate by reason of the enactment of this
2 Act.

3 (5) Any administrative action relating to the prepara-
4 tion or promulgation of a regulation by the Council on
5 Environmental Quality may be continued by the Depart-
6 ment or the President with the same effect as if this Act
7 had not been enacted.

8 (6) The contracts, liabilities, records, property, and
9 other assets and interests of the Council on Environmental
10 Quality shall, after the effective date of this Act, be con-
11 sidered to be the contracts, liabilities, records, property,
12 and other assets and interests of the Department.

13 **SEC. 115. ADMINISTRATIVE PROVISIONS.**

14 (a) ACCEPTANCE OF MONEY AND PROPERTY.—(1)
15 The Secretary may accept and retain money, uncompen-
16 sated services, and other real and personal property or
17 rights (whether by gift, bequest, devise, or otherwise) for
18 the purpose of carrying out the Department's programs
19 and activities, except that the Secretary shall not endorse
20 any company, product, organization, or service. Gifts, be-
21 quests, and devises of money and proceeds from sales of
22 other property received as gifts, bequests, or devises shall
23 be credited in a separate fund in the Treasury of the Unit-
24 ed States and shall be available for disbursement upon the
25 order of the Secretary.

1 (2) The Secretary shall prescribe regulations and
2 guidelines setting forth the criteria the Department shall
3 use in determining whether to accept a gift, bequest, or
4 devise. Such criteria shall take into consideration whether
5 the acceptance of the property would reflect unfavorably
6 upon the Department's or any employee's ability to carry
7 out its responsibilities or official duties in a fair and objec-
8 tive manner, or would compromise the integrity of or the
9 appearance of the integrity of a Government program or
10 any official involved in that program.

11 (b) SEAL OF THE DEPARTMENT.—(1) On the effec-
12 tive date of this Act, the seal of the Environmental Protec-
13 tion Agency with appropriate changes shall be the seal of
14 the Department of Environmental Protection, until such
15 time as the Secretary may cause a seal of office to be made
16 for the Department of Environmental Protection of such
17 design as the Secretary shall approve.

18 (2)(A) Chapter 33 of title 18, United States Code,
19 is amended by adding at the end thereof the following new
20 section:

21 **“§ 716. Department of Environmental Protection Seal**

22 “(a) Whoever knowingly displays any printed or other
23 likeness of the official seal of the Department of Environ-
24 mental Protection, or any facsimile thereof, in, or in con-
25 nection with, any advertisement, poster, circular, book,

1 pamphlet, or other publication, public meeting, play, mo-
2 tion picture, telecast, or other production, or on any build-
3 ing, monument, or stationery, for the purpose of convey-
4 ing, or in a manner reasonably calculated to convey, a
5 false impression of sponsorship or approval by the Govern-
6 ment of the United States or by any department, agency,
7 or instrumentality thereof, shall be fined not more than
8 \$250 or imprisoned not more than 6 months, or both.

9 “(b) Whoever, except as authorized under regulations
10 promulgated by the Secretary of Environmental Protec-
11 tion and published in the Federal Register, knowingly
12 manufactures, reproduces, sells, or purchases for resale,
13 either separately or appended to any article manufactured
14 or sold, any likeness of the official seal of the Department
15 of Environmental Protection, or any substantial part
16 thereof, except for manufacture or sale of the article for
17 the official use of the Government of the United States,
18 shall be fined not more than \$250 or imprisoned not more
19 than 6 months, or both.

20 “(c) A violation of subsection (a) or (b) may be en-
21 joined at the suit of the Attorney General of the United
22 States upon complaint by any authorized representative
23 of the Secretary of the Department of Environmental Pro-
24 tection.”.

1 (B) The table of sections for chapter 33 of title 18,
2 United States Code, is amended by adding at the end
3 thereof:

“716. Department of Environmental Protection Seal.”.

4 (c) ACQUISITION OF COPYRIGHTS AND PATENTS.—
5 The Secretary is authorized to acquire any of the following
6 described rights if the property acquired thereby is for use
7 by or for, or useful to, the Department:

8 (1) copyrights, patents, and applications for
9 patents, designs, processes, and manufacturing data;

10 (2) licenses under copyrights, patents, and ap-
11 plications for patents; and

12 (3) releases, before suit is brought, for past in-
13 fringement of patents or copyrights.

14 (d) ADVISORY COMMITTEE COMPENSATION.—The
15 Secretary is authorized to pay members of advisory com-
16 mittees and others who perform services as authorized
17 under section 3109 of title 5, United States Code, at rates
18 for individuals not to exceed the per diem rate equivalent
19 to the rate for level V of the Executive Schedule under
20 section 5316 of title 5, United States Code.

21 **SEC. 116. INHERENTLY GOVERNMENTAL FUNCTIONS.**

22 (a) GOVERNMENT OFFICERS AND EMPLOYEES.—(1)
23 Inherently governmental functions of the Department
24 shall be performed only by officers and employees of the
25 United States. For purposes of this section, the term “in-

1 herently governmental function” means any activity which
2 is so intimately related to the public interest as to man-
3 date performance by Government officers and employees.
4 Inherently governmental functions include those activities
5 which require either the exercise of discretion in applying
6 Government authority or the use of value judgment in
7 making decisions for the Government. The Secretary shall
8 promulgate regulations or internal guidance to implement
9 this section. This section is not intended, and may not be
10 construed, to create any right or benefit, substantive or
11 procedural, enforceable at law by a party against the Unit-
12 ed States, the Department, its officers, or any person.

13 (b) CONFLICTS OF INTEREST.—(1) The Secretary
14 shall by regulation require any person proposing to enter
15 into a contract, grant, or cooperative agreement whether
16 by sealed bid or negotiation, for the conduct of research,
17 development, evaluation activities, or for consulting serv-
18 ices, to provide the Secretary, prior to entering into any
19 such contract, agreement, or arrangement, with all rel-
20 evant information, as determined by the Secretary, bear-
21 ing on whether that person has a possible conflict of inter-
22 est with respect to—

23 (A) being able to render impartial, technically
24 sound, or objective assistance or advice in light of

1 other activities or relationships with other persons;
2 or

3 (B) being given an unfair competitive advan-
4 tage.

5 (2) Such person shall ensure, in accordance with reg-
6 ulations prescribed by the Secretary, compliance with this
7 section by subcontractors of such person who are engaged
8 to perform similar services.

9 (3) For purposes of this subsection, the term “con-
10 sulting services” includes—

11 (A) management and professional support serv-
12 ices;

13 (B) studies, analyses, and evaluations;

14 (C) engineering and technical services, exclud-
15 ing routine engineering services such as automated
16 data processing and architect and engineering con-
17 tracts; and

18 (D) research and development.

19 (c) REQUIRE AFFIRMATIVE FINDING; CONFLICTS OF
20 INTEREST WHICH CANNOT BE AVOIDED; MITIGATION OF
21 CONFLICTS.—(1) Subject to the provisions of paragraph
22 (2), the Secretary may not enter into any such contract,
23 agreement, or arrangement, unless he affirmatively finds,
24 after evaluating all such information and any other rel-
25 evant information otherwise available to him, either that—

1 (A) there is little or no likelihood that a conflict
2 of interest would exist; or

3 (B) that such conflict has been avoided after
4 appropriate conditions have been included in such
5 contract, agreement, or arrangement.

6 (2) If the Secretary determines that such conflict of
7 interest exists and that such conflict of interest cannot be
8 avoided by including appropriate conditions therein, the
9 Secretary may enter into such contract, agreement, or ar-
10 rangement, if the Secretary—

11 (A) determines that it is in the best interests of
12 the United States to do so; and

13 (B) includes appropriate conditions in such con-
14 tract, agreement, or arrangement to mitigate such
15 conflict.

16 (d) PUBLIC NOTICE REGARDING CONFLICTS OF IN-
17 TEREST.—The Secretary shall promulgate regulations
18 which require public notice to be given whenever the Sec-
19 retary determines that the award of a contract, agreement,
20 or arrangement may result in a conflict of interest which
21 cannot be avoided by including appropriate conditions
22 therein.

23 (e) DISCLAIMER.—Nothing in this section shall pre-
24 clude the Department from promulgating regulations to
25 monitor potential conflicts after the contract award.

1 (f) CENTRAL FILE.—The Department shall maintain
2 a central file regarding all cases when a public notice is
3 issued. Other information required under this section shall
4 also be compiled. Access to this information shall be con-
5 trolled to safeguard any proprietary information.

6 (g) REGULATIONS.—No later than 120 days after the
7 effective date of this Act, the Secretary shall promulgate
8 regulations for the implementation of this section.

9 **SEC. 117. REFERENCES.**

10 Reference in any other Federal law, Executive order,
11 rule, regulation, or delegation of authority, or any docu-
12 ment of or pertaining—

13 (1) to the Administrator of the Environmental
14 Protection Agency shall be deemed to refer to the
15 Secretary of Environmental Protection;

16 (2) to the Environmental Protection Agency
17 shall be deemed to refer to the Department of Envi-
18 ronmental Protection;

19 (3) to the Deputy Administrator of the Envi-
20 ronmental Protection Agency shall be deemed to
21 refer to the Deputy Secretary of Environmental Pro-
22 tection; or

23 (4) to any Assistant Administrator of the Envi-
24 ronmental Protection Agency shall be deemed to

1 refer to an Assistant Secretary of the Department of
2 Environmental Protection.

3 **SEC. 118. SAVINGS PROVISIONS.**

4 (a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—

5 All orders, determinations, rules, regulations, permits,
6 agreements, grants, contracts, certificates, licenses, reg-
7 istrations, privileges, and other administrative actions—

8 (1) which have been issued, made, granted, or
9 allowed to become effective by the President, by the
10 Administrator of the Environmental Protection
11 Agency, or by a court of competent jurisdiction, in
12 the performance of functions of the Administrator or
13 the Environmental Protection Agency, and

14 (2) which are in effect at the time this Act
15 takes effect, or were final before the effective date
16 of this Act and are to become effective on or after
17 the effective date of this Act,

18 shall continue in effect according to their terms until
19 modified, terminated, superseded, set aside, or revoked in
20 accordance with law by the President, the Secretary of En-
21 vironmental Protection, or other authorized official, a
22 court of competent jurisdiction, or by operation of law.

23 (b) PROCEEDINGS NOT AFFECTED.—The provisions
24 of this Act shall not affect any proceedings or any applica-
25 tion for any license, permit, certificate, or financial assist-

1 ance pending before the Environmental Protection Agency
2 at the time this Act takes effect, but such proceedings and
3 applications shall be continued. Orders shall be issued in
4 such proceedings, appeals shall be taken therefrom, and
5 payments shall be made pursuant to such orders, as if this
6 Act had not been enacted, and orders issued in any such
7 proceedings shall continue in effect until modified, termi-
8 nated, superseded, or revoked by a duly authorized official,
9 by a court of competent jurisdiction, or by operation of
10 law. Nothing in this subsection shall be deemed to prohibit
11 the discontinuance or modification of any such proceeding
12 under the same terms and conditions and to the same ex-
13 tent that such proceeding could have been discontinued
14 or modified if this Act had not been enacted.

15 (c) SUITS NOT AFFECTED.—The provisions of this
16 Act shall not affect suits commenced before the date this
17 Act takes effect, and in all such suits, proceedings shall
18 be had, appeals taken, and judgments rendered in the
19 same manner and with the same effect as if this Act had
20 not been enacted.

21 (d) NONABATEMENT OF ACTIONS.—No suit, action,
22 or other proceeding commenced by or against the Environ-
23 mental Protection Agency, or by or against any individual
24 in the official capacity of such individual as an officer of

1 the Environmental Protection Agency, shall abate by rea-
2 son of the enactment of this Act.

3 (e) ADMINISTRATIVE ACTIONS RELATING TO PRO-
4 MULGATION OF REGULATIONS.—Any administrative ac-
5 tion relating to the preparation or promulgation of a regu-
6 lation by the Environmental Protection Agency may be
7 continued by the Department with the same effect as if
8 this Act had not been enacted.

9 (f) PROPERTY AND RESOURCES.—The contracts, li-
10 abilities, records, property, and other assets and interests
11 of the Environmental Protection Agency shall, after the
12 effective date of this Act, be considered to be the con-
13 tracts, liabilities, records, property, and other assets and
14 interests of the Department.

15 (g) SAVINGS.—The Department of Environmental
16 Protection and its officers, employees, and agents shall
17 have all the powers and authorities of the Environmental
18 Protection Agency.

19 **SEC. 119. CONFORMING AMENDMENTS.**

20 (a) PRESIDENTIAL SUCCESSION.—Section 19(d)(1)
21 of title 3, United States Code, is amended by inserting
22 before the period at the end thereof the following: “, Sec-
23 retary of Environmental Protection”.

24 (b) DEFINITION OF DEPARTMENT, CIVIL SERVICE
25 LAWS.—Section 101 of title 5, United States Code, is

1 amended by adding at the end thereof the following: “The
2 Department of Environmental Protection”.

3 (c) COMPENSATION, LEVEL I.—Section 5312 of title
4 5, United States Code, is amended by adding at the end
5 thereof the following: “Secretary of Environmental Protec-
6 tion”.

7 (d) COMPENSATION, LEVEL II.—Section 5313 of title
8 5, United States Code, is amended by striking out “Ad-
9 ministrator of Environmental Protection Agency” and in-
10 serting in lieu thereof “Deputy Secretary of Environ-
11 mental Protection”.

12 (e) COMPENSATION, LEVEL IV.—Section 5315 of
13 title 5, United States Code, is amended—

14 (1) by striking out “Inspector General, Envi-
15 ronmental Protection Agency” and inserting in lieu
16 thereof “Inspector General, Department of Environ-
17 mental Protection”; and

18 (2) by striking each reference to an Assistant
19 Administrator of the Environmental Protection
20 Agency and by adding at the end thereof the follow-
21 ing:

22 “Assistant Secretaries, Department of Environ-
23 mental Protection (12).

24 “General Counsel, Department of Environ-
25 mental Protection.”; and

1 (3) by striking out “Chief Financial Officer,
2 Environmental Protection agency” and inserting in
3 lieu thereof “Chief Financial Officer, Department of
4 Environmental Protection”.

5 (f) COMPENSATION, LEVEL V.—Section 5316 of title
6 5, United States Code, is amended by adding at the end
7 thereof the following:

8 “Director of the Bureau of Environmental Sta-
9 tistics, Department of Environmental Protection.

10 “Executive Director of the Commission on Im-
11 proving Environmental Protection.”.

12 (g) INSPECTOR GENERAL ACT.—The Inspector Gen-
13 eral Act of 1978 is amended—

14 (1) in section 11(1), by inserting “Environ-
15 mental Protection,” after “Energy,”; and

16 (2) in section 11(2), by inserting “Environ-
17 mental Protection,” after “Energy,”.

18 **SEC. 120. ADDITIONAL CONFORMING AMENDMENTS.**

19 After consultation with the Committee on Govern-
20 mental Affairs and the Committee on Environment and
21 Public Works and other appropriate committees of the
22 United States Senate and the appropriate committees of
23 the House of Representatives, the Secretary of Environ-
24 mental Protection shall prepare and submit to the Con-
25 gress legislation which the Secretary determines is nec-

1 essary and appropriate containing technical and conform-
2 ing amendments to the United States Code, and to other
3 provisions of law, to reflect the changes made by this Act.

4 **SEC. 121. SENSE OF THE SENATE.**

5 It is the sense of the Senate that building the capac-
6 ity of State and local governments to more efficiently and
7 effectively implement and manage environmental regula-
8 tions should be a primary mission of the Department of
9 Environmental Protection.

10 **SEC. 122. OFFICE OF ENVIRONMENTAL JUSTICE.**

11 There is established within the Department the Office
12 of Environmental Justice. The Office of Environmental
13 Justice shall—

14 (1) develop a strategic plan to ensure equality
15 in environmental protection;

16 (2) evaluate whether environmental policy is
17 helping individuals who suffer the highest exposure
18 to pollution, and identify opportunities for prevent-
19 ing or reducing such exposure;

20 (3) compile an annual report on progress in
21 achieving environmental equity;

22 (4) require the collection of data on environ-
23 mental health effects so that impacts on different in-
24 dividuals or groups can be understood;

1 (5) identify environmental high impact areas
2 which are subject to the highest loadings of toxic
3 chemicals, through all media; and

4 (6) assess the health effects that may be caused
5 by emissions in the environmental high impact areas
6 of highest impact.

7 **SEC. 123. HUMAN HEALTH AND SAFETY OR THE ENVIRON-**
8 **MENT FINAL REGULATIONS.**

9 (a) In promulgating any final regulation relating to
10 human health and safety or the environment after the date
11 of enactment of this Act, the Secretary of Environmental
12 Protection shall publish in the Federal Register—

13 (1) an estimate, performed with as much speci-
14 ficity as practicable, of the risk to the health and
15 safety of individual members of the public addressed
16 by the regulation and its affect on human health or
17 the environment and the costs associated with imple-
18 mentation of, and compliance with, the regulation;

19 (2) a comparative analysis of the risk addressed
20 by the regulation relative to other risks to which the
21 public is exposed;

22 (3) the Secretary's certification that—

23 (A) the estimate under paragraph (1) and
24 the analysis under paragraph (2) are based
25 upon a scientific evaluation of the risk to the

1 health and safety of individual members of the
2 public and to human health or the environment
3 and are supported by the best available sci-
4 entific data;

5 (B) the regulation will substantially ad-
6 vance the purpose of protecting the human
7 health and safety or the environment against
8 the specified identified risk; and

9 (C) the regulation will produce benefits to
10 the human health and safety or the environ-
11 ment that will justify the cost to the Govern-
12 ment and the public of implementation of and
13 compliance with the regulation.

14 (b) In the event that the Secretary cannot make the
15 certification required under subsection (a), the Secretary
16 shall report to Congress that such certification cannot be
17 made and shall include a statement of the reasons therefor
18 in such report and in the final regulation.

19 (c) The certification required by this section shall not
20 be construed to amend, modify, or alter any statute and
21 shall not be subject to judicial review. Nothing in this sec-
22 tion shall be construed to grant a cause of action to any
23 person.

1 **SEC. 124. WETLAND DETERMINATIONS BY A SINGLE AGEN-**
2 **CY.**

3 In consultation with the Secretary of Agriculture, the
4 Secretary of Environmental Protection, the Secretary of
5 the Army, and the Secretary of the Interior, the President
6 shall, within 90 days of the date of enactment of this Act,
7 make recommendations and report to the Congress on
8 measures to—

9 (1) provide that a single Federal agency be re-
10 sponsible for making technical determinations, in-
11 cluding identification of wetlands, on agricultural
12 lands with respect to wetland or converted wetland
13 in order to reduce confusion among agricultural pro-
14 ducers; and

15 (2) provide that the Soil Conservation Service
16 be the Federal agency responsible for all such tech-
17 nical determinations concerning wetlands on agricul-
18 tural lands.

19 **TITLE II—ESTABLISHMENT OF**
20 **THE COMMISSION ON IM-**
21 **PROVING ENVIRONMENTAL**
22 **PROTECTION**

23 **SEC. 201. ESTABLISHMENT; MEMBERSHIP.**

24 (a) ESTABLISHMENT.—There is established the Com-
25 mission on Improving Environmental Protection (here-
26 after referred to as “the Commission”) whose 13 members

1 including the Chairman shall be composed of experts in
2 governmental organization (with emphasis on environ-
3 mental organization), management of organizations and
4 environmental regulation and improved environmental
5 governmental service delivery, consisting of—

6 (1) 7 members to be appointed by the Presi-
7 dent;

8 (2) 2 members to be appointed by the Speaker
9 of the House of Representatives;

10 (3) 1 member to be appointed by the Minority
11 Leader of the House of Representatives;

12 (4) 2 members to be appointed by the Senate
13 Majority Leader; and

14 (5) 1 member to be appointed by the Senate
15 Minority Leader.

16 (b) CHAIRMAN.—The Chairman of the Commission
17 shall be appointed by the President.

18 (c) POLITICAL PARTY AFFILIATION.—Notwithstand-
19 ing any other provision of this section, no more than 7
20 members of the Commission may be from the same politi-
21 cal party.

22 **SEC. 202. COMMISSION RESPONSIBILITIES.**

23 (a) RESPONSIBILITIES.—The Commission shall be
24 responsible for examining and making recommendations
25 on the management and implementation of the environ-

1 mental laws and programs within the jurisdiction of the
2 Department of Environmental Protection in order to en-
3 hance the ability of the Department to preserve and pro-
4 tect human health and the environment. The Commission
5 shall make recommendations and otherwise advise the
6 President and the Congress on the need to—

7 (1) enhance and strengthen the management
8 and implementation of existing programs within the
9 Department;

10 (2) enhance the organization of the Department
11 to eliminate duplication and overlap between dif-
12 ferent programs;

13 (3) enhance the coordination between different
14 programs and offices within the Department;

15 (4) enhance the consistency of policies through-
16 out the Department;

17 (5) establish new and enhanced small business
18 and small governmental jurisdictions compliance as-
19 sistance programs, and to strengthen organizational
20 mechanisms in the Department for providing better
21 compliance and technical assistance to small busi-
22 nesses and small governmental jurisdictions; and

23 (6) enhance the capacity of State and local gov-
24 ernments to manage, finance, and implement envi-
25 ronmental laws (including regulations).

1 (b) RECOMMENDATIONS.—The Commission shall
2 provide specific steps and proposals for implementing the
3 Commission’s recommendations including an estimate of
4 the costs of implementing such recommendations, except
5 that the Commission shall not suggest substantive changes
6 in the policy expressed by existing laws.

7 (c) CONFLICT OF INTERESTS.—For purposes of the
8 provisions of chapter 11 of part I of title 18, United States
9 Code, a member of the Commission (to whom such provi-
10 sions would not otherwise apply except for this subsection)
11 shall be a special Government employee.

12 **SEC. 203. REPORT TO THE PRESIDENT AND CONGRESS.**

13 The Commission shall report to the President and the
14 Congress on its investigation, findings, and recommenda-
15 tions in an interim report no later than 12 months after
16 the effective date of this title, and in a final report no
17 later than 24 months after the effective date of this title.
18 The interim report shall be made available for public re-
19 view and comment, and the comments taken into account
20 in finalizing the report.

21 **SEC. 204. COMMISSION STAFF.**

22 The Commission shall appoint an Executive Director
23 who shall be compensated at a rate not to exceed the rate
24 of basic pay prescribed for level V of the Executive Sched-
25 ule under section 5316 of title 5, United States Code.

1 With the approval of the Commission the Executive Direc-
2 tor may appoint and fix the compensation of staff suffi-
3 cient to enable the Commission to carry out its duties.

4 **SEC. 205. ADVISORY GROUPS.**

5 The Chairman shall convene at least one advisory
6 group to assist the Commission in developing its rec-
7 ommendations. One advisory group shall be composed of
8 past staff of the Department of Environmental Protection
9 and its predecessor Environmental Protection Agency,
10 other Federal and State officials experienced in admin-
11 istering environmental protection programs, members of
12 the regulated community and members of public interest
13 groups organized to further the goals of environmental
14 protection. The Executive Director is authorized to pay
15 members of advisory committees and others who perform
16 services as authorized under section 3109 of title 5, Unit-
17 ed States Code, at rates for individuals not to exceed the
18 per diem rate equivalent to the rate for level V of the Ex-
19 ecutive Schedule under section 5316 of title 5, United
20 States Code. The advisory group shall be subject to the
21 provisions of the Federal Advisory Committee Act.

22 **SEC. 206. TERMINATION OF COMMISSION.**

23 No later than 90 days after the date on which the
24 Commission submits its final report, the Commission shall
25 terminate unless otherwise directed by the President.

1 **SEC. 207. FUNDING; AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated \$2,000,000
3 in fiscal year 1993 and \$2,000,000 in fiscal year 1994
4 to carry out the provisions of this title.

5 **TITLE III—EFFECTIVE DATE**

6 **SEC. 301. EFFECTIVE DATE.**

7 This Act and the amendments made by this Act shall
8 take effect on such date during the 6-month period begin-
9 ning on the date of enactment, as the President may direct
10 in an Executive order. If the President fails to issue an
11 Executive order for the purpose of this section, this Act
12 and such amendments shall take effect 6 months after the
13 date of the enactment of this Act.

 Passed the Senate May 4 (legislative day, April 19),
1993.

Attest:

Secretary.

S 171 ES—2

S 171 ES—3

S 171 ES—4

S 171 ES—5