

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

# H.R. 961

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## AN ACT

To amend the Federal Water Pollution Control Act.

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; TABLE OF CONTENTS.**

4        (a) SHORT TITLE.—This Act may be cited as the  
5        “Clean Water Amendments of 1995”.

## 1 (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.
- Sec. 308. Personnel and reporting.
- Sec. 309. Secondary treatment.
- Sec. 310. Toxic pollutants.
- Sec. 311. Local pretreatment authority.
- Sec. 312. Compliance with management practices.
- Sec. 313. Federal enforcement.
- Sec. 314. Response plans for discharges of oil or hazardous substances.
- 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 nonpetroleum oil products and oil substitutes.
- Sec. 507. Dispute resolution.
- Sec. 508. Needs estimate.
- Sec. 509. Program authorizations.
- Sec. 510. Indian tribes.
- Sec. 511. Food processing and food safety.
- Sec. 512. Audit dispute resolution.
- Sec. 513. American-made equipment and products.

#### 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.

#### 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. Environmental Protection Agency permits.
- Sec. 903. Corps of Engineers permits.

Sec. 904. Penalties.  
 Sec. 905. Annual report.  
 Sec. 906. Reference to Committee.

#### TITLE X—ADDITIONAL PROVISIONS

Sec. 1001. Coastal nonpoint pollution control.

#### 1 **SEC. 2. DEFINITION.**

2 In this Act, the term “Administrator” means the Ad-  
 3 ministrator of the Environmental Protection Agency.

#### 4 **SEC. 3. AMENDMENT OF FEDERAL WATER POLLUTION CON-** 5 **TROL ACT.**

6 Except as otherwise expressly provided, whenever in  
 7 this Act an amendment or repeal is expressed in terms  
 8 of an amendment to, or repeal of, a section or other provi-  
 9 sion, the reference shall be considered to be made to a  
 10 section or other provision of the Federal Water Pollution  
 11 Control Act (33 U.S.C. 1251–1387).

### 12 **TITLE I—RESEARCH AND** 13 **RELATED PROGRAMS**

#### 14 **SEC. 101. NATIONAL GOALS AND POLICIES.**

15 (a) NONPOINT SOURCE POLLUTION; STATE STRATE-  
 16 GIES.—Section 101(a) (33 U.S.C. 1251(a)) is amended—

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

18 (6);

19 (2) in paragraph (7)—

20 (A) by inserting “, including public and  
 21 private sector programs using economic incen-  
 22 tives,” after “programs”;

1 (B) by inserting “, including stormwater,”  
2 after “nonpoint sources of pollution” the first  
3 place it appears; and

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

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

7 “(8) it is the national policy to support State  
8 efforts undertaken in consultation with tribal and  
9 local governments to identify, prioritize, and imple-  
10 ment water pollution prevention and control strate-  
11 gies;”.

12 (b) ROLE OF STATE, TRIBAL, AND LOCAL GOVERN-  
13 MENTS.—Section 101(a) is further amended by adding at  
14 the end the following:

15 “(9) it is the national policy to recognize, sup-  
16 port, and enhance the role of State, tribal, and local  
17 governments in carrying out the provisions of this  
18 Act;”.

19 (c) RECLAMATION AND REUSE.—

20 (1) RECLAMATION.—Section 101(a)(4) is  
21 amended by inserting after “works” the following:  
22 “and to reclaim waste water from municipal and in-  
23 dustrial sources”.

24 (2) BENEFICIAL REUSE.—Section 101(a) is fur-  
25 ther amended by adding at the end the following:

1           “(10) it is the national policy that beneficial  
2           reuse of waste water effluent and biosolids be en-  
3           couraged to the fullest extent possible; and”.

4           (d) WATER USE EFFICIENCY.—Section 101(a) is fur-  
5           ther amended by adding at the end the following:

6           “(11) it is the national policy that water use ef-  
7           ficiency be encouraged to the fullest extent pos-  
8           sible.”.

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

11          “(h) NET BENEFITS.—It is the national policy that  
12          the development and implementation of water quality pro-  
13          tection programs pursuant to this Act—

14                 “(1) be based on scientifically objective and un-  
15                 biased information concerning the nature and mag-  
16                 nitude of risk; and

17                 “(2) maximize net benefits to society in order  
18                 to promote sound regulatory decisions and promote  
19                 the rational and coherent allocation of society’s lim-  
20                 ited resources and not unreasonably restrict outdoor  
21                 recreation and other socially beneficial activities.”.

22          **SEC. 102. RESEARCH, INVESTIGATIONS, TRAINING, AND IN-**  
23                                 **FORMATION.**

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

1 (1) by striking “and” at the end of paragraph  
2 (5);

3 (2) by striking the period at the end of para-  
4 graph (6) and inserting “; and”; and

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

6 “(7) in cooperation with appropriate Federal,  
7 State, and local agencies, conduct, promote, and en-  
8 courage to the maximum extent feasible, in water-  
9 sheds that may be significantly affected by nonpoint  
10 sources of pollution, monitoring and measurement of  
11 water quality by means and methods that will help  
12 to identify the relative contributions of particular  
13 nonpoint sources.”.

14 (b) BASIC RESEARCH AND GRANTS TO LOCAL GOV-  
15 ERNMENTS.—Section 104(b)(3) (33 U.S.C. 1254(B)(3))  
16 is amended to read as follows:

17 “(3) in cooperation with Federal, State and  
18 local agencies and public or private institutions, or-  
19 ganizations, or individuals, conduct and promote a  
20 comprehensive program of basic research, experi-  
21 ments, and studies relating to causes, sources, ef-  
22 fects, extent, prevention, and detection of water pol-  
23 lution and make grants to State water pollution con-  
24 trol agencies, interstate agencies, local governments,  
25 other public or nonprofit private agencies, institu-

1 tions, organizations, and individuals for such pur-  
2 poses;”.

3 (c) TECHNICAL ASSISTANCE FOR RURAL AND SMALL  
4 TREATMENT WORKS.—Section 104(b) (33 U.S.C.  
5 1254(b)) is amended—

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

8 (2) by striking the period at the end of para-  
9 graph (7) and inserting a semicolon; and

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

12 “(8) make grants to States, local governments,  
13 and nonprofit organizations to provide technical as-  
14 sistance and training to rural and small publicly  
15 owned treatment works (including treatment works  
16 that utilize an alternative wastewater treatment sys-  
17 tem) to enable such treatment works to achieve and  
18 maintain compliance with the requirements of this  
19 Act; and

20 “(9) disseminate information to rural, small,  
21 and disadvantaged communities with respect to the  
22 planning, design, construction, and operation of  
23 treatment works.”.



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

4 “(5) SMALL IMPOVERISHED COMMUNITIES.—

5 “(A) GRANTS.—The Administrator may  
6 make grants to States to provide assistance for  
7 planning, design, and construction of publicly  
8 owned treatment works and alternative  
9 wastewater treatment systems to provide  
10 wastewater services to rural communities of  
11 3,000 or less that are not currently served by  
12 any sewage collection or wastewater treatment  
13 system and are severely economically disadvan-  
14 taged, as determined by the Administrator.

15 “(B) AUTHORIZATION.—There is author-  
16 ized to be appropriated to carry out this para-  
17 graph \$50,000,000 per fiscal year for fiscal  
18 years 1996 through 2000.”.

19 (e) AUTHORIZATION OF APPROPRIATIONS.—Section  
20 104(u) (33 U.S.C. 1254(u)) is amended—

21 (1) by striking “and” before “(6)”; and

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

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

4 **SEC. 103. STATE MANAGEMENT ASSISTANCE.**

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

6 (1) by striking “and” before “\$75,000,000”;

7 (2) by inserting after “1990” the following: “,  
8 such sums as may be necessary for each of fiscal  
9 years 1991 through 1995, and \$150,000,000 per fis-  
10 cal year for each of fiscal years 1996 through  
11 2000”; and

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

17 **SEC. 104. MINE WATER POLLUTION CONTROL.**

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

20 **“SEC. 107. MINE WATER POLLUTION CONTROL.**

21 “(a) ACIDIC AND OTHER TOXIC MINE DRAINAGE.—  
22 The Administrator shall establish a program to dem-  
23 onstrate the efficacy of measures for abatement of the  
24 causes and treatment of the effects of acidic and other  
25 toxic mine drainage within qualified hydrologic units af-

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

4 “(b) GRANTS.—

5 “(1) IN GENERAL.—Any State or Indian tribe  
6 may apply to the Administrator for a grant for any  
7 project which provides for abatement of the causes  
8 or treatment of the effects of acidic or other toxic  
9 mine drainage within a qualified hydrologic unit af-  
10 fected by past coal mining practices.

11 “(2) APPLICATION REQUIREMENTS.—An appli-  
12 cation submitted to the Administrator under this  
13 section shall include each of the following:

14 “(A) An identification of the qualified hy-  
15 drologic unit.

16 “(B) A description of the extent to which  
17 acidic or other toxic mine drainage is affecting  
18 the water quality and biological resources with-  
19 in the hydrologic unit.

20 “(C) An identification of the sources of  
21 acidic or other toxic mine drainage within the  
22 hydrologic unit.

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

1 other toxic mine drainage within the hydrologic  
2 unit.

3 “(E) The cost of undertaking the proposed  
4 abatement or treatment measures.

5 “(c) FEDERAL SHARE.—

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

9 “(2) LANDS, EASEMENTS, AND RIGHTS-OF-  
10 WAY.—Contributions of lands, easements, and  
11 rights-of-way shall be credited toward the non-Fed-  
12 eral share of the cost of a project under this section  
13 but not in an amount exceeding 25 percent of the  
14 total project cost.

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

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

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

1 a grant under this section for the purposes of an acidic  
2 or toxic mine drainage abatement or treatment project  
3 within a qualified hydrologic unit located on lands and wa-  
4 ters under the administrative jurisdiction of such entity.

5 “(f) APPROVAL.—The Administrator shall approve  
6 an application submitted pursuant to subsection (b) or (e)  
7 after determining that the application meets the require-  
8 ments of this section.

9 “(g) QUALIFIED HYDROLOGIC UNIT DEFINED.—For  
10 purposes of this section, the term ‘qualified hydrologic  
11 unit’ means a hydrologic unit—

12 “(1) in which the water quality has been signifi-  
13 cantly affected by acidic or other toxic mine drain-  
14 age from past coal mining practices in a manner  
15 which adversely impacts biological resources; and

16 “(2) which contains lands and waters eligible  
17 for assistance under title IV of the Surface Mining  
18 and Reclamation Act of 1977.”.

19 **SEC. 105. WATER SANITATION IN RURAL AND NATIVE**  
20 **ALASKA VILLAGES.**

21 (a) IN GENERAL.—Section 113 (33 U.S.C. 1263) is  
22 amended by striking the section heading and designation  
23 and subsections (a) through (f) and inserting the follow-  
24 ing:

1 **“SEC. 113. ALASKA VILLAGE PROJECTS AND PROGRAMS.**

2 “(a) GRANTS.—The Administrator is authorized to  
3 make grants—

4 “(1) for the development and construction of  
5 facilities which provide sanitation services for rural  
6 and Native Alaska villages;

7 “(2) for training, technical assistance, and edu-  
8 cational programs relating to operation and mainte-  
9 nance for sanitation services in rural and Native  
10 Alaska villages; and

11 “(3) for reasonable costs of administering and  
12 managing grants made and programs and projects  
13 carried out under this section; except that not to ex-  
14 ceed 4 percent of the amount of any grant made  
15 under this section may be made for such costs.

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

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

23 “(d) GRANTS TO STATE FOR BENEFIT OF VIL-  
24 LAGES.—Grants under this section may be made to the  
25 State for the benefit of rural Alaska villages and Alaska  
26 Native villages.

1       “(e) COORDINATION.—In carrying out activities  
2 under this subsection, the Administrator is directed to co-  
3 ordinate efforts between the State of Alaska, the Secretary  
4 of Housing and Urban Development, the Secretary of  
5 Health and Human Services, the Secretary of the Interior,  
6 the Secretary of Agriculture, and the recipients of grants.

7       “(f) FUNDING.—There is authorized to be appro-  
8 priated \$25,000,000 for fiscal years beginning after Sep-  
9 tember 30, 1995, to carry out this section.”.

10       (b) CONFORMING AMENDMENT.—Section 113(g) is  
11 amended by inserting after “(g)” the following: “DEFINI-  
12 TIONS.—”.

13 **SEC. 106. AUTHORIZATION OF APPROPRIATIONS FOR**  
14 **CHESAPEAKE PROGRAM.**

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

16           (1) in paragraph (1), by inserting “such sums  
17 as may be necessary for fiscal years 1991 through  
18 1995, and \$3,000,000 per fiscal year for each of fis-  
19 cal years 1996 through 2000” after “1990,”; and

20           (2) in paragraph (2), by inserting “such sums  
21 as may be necessary for fiscal years 1991 through  
22 1995, and \$18,000,000 per fiscal year for each of  
23 fiscal years 1996 through 2000” after “1990,”.

24 **SEC. 107. GREAT LAKES MANAGEMENT.**

25       (a) GREAT LAKES RESEARCH COUNCIL.—

1           (1) IN GENERAL.—Section 118 (33 U.S.C.  
2 1268) is amended—

3           (A) in subsection (a)(3)—

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

6                 “(E) ‘Council’ means the Great Lakes Re-  
7 search Council established by subsection  
8 (d)(1);”;

9                 (ii) by striking “and” at the end of  
10 subparagraph (I);

11                 (iii) by striking the period at the end  
12 of subparagraph (J) and inserting “; and”;  
13 and

14                 (iv) by adding at the end the follow-  
15 ing:

16                 “(K) ‘Great Lakes research’ means the ap-  
17 plication of scientific or engineering expertise to  
18 explain, understand, and predict a physical,  
19 chemical, biological, or socioeconomic process,  
20 or the interaction of 1 or more of the processes,  
21 in the Great Lakes ecosystem.”;

22           (B) by striking subsection (d) and insert-  
23 ing the following:

24           “(d) GREAT LAKES RESEARCH COUNCIL.—



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

3           “(2) DUTIES OF COUNCIL.—The Council—

4               “(A) shall advise and promote the coordi-  
5 nation of Federal Great Lakes research activi-  
6 ties to avoid unnecessary duplication and en-  
7 sure greater effectiveness in achieving protec-  
8 tion of the Great Lakes ecosystem through the  
9 goals of the Great Lakes Water Quality Agree-  
10 ment;

11               “(B) not later than 1 year after the date  
12 of the enactment of this subparagraph and bi-  
13 ennially thereafter and after providing oppor-  
14 tunity for public review and comment, shall pre-  
15 pare and provide to interested parties a docu-  
16 ment that includes—

17                   “(i) an assessment of the Great Lakes  
18 research activities needed to fulfill the  
19 goals of the Great Lakes Water Quality  
20 Agreement;

21                   “(ii) an assessment of Federal exper-  
22 tise and capabilities in the activities needed  
23 to fulfill the goals of the Great Lakes  
24 Water Quality Agreement, including an in-  
25 ventory of Federal Great Lakes research

1 programs, projects, facilities, and person-  
2 nel; and

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

8 “(C) shall identify topics for and partici-  
9 pate in meetings, workshops, symposia, and  
10 conferences on Great Lakes research issues;

11 “(D) shall make recommendations for the  
12 uniform collection of data for enhancing Great  
13 Lakes research and management protocols re-  
14 lating to the Great Lakes ecosystem;

15 “(E) shall advise and cooperate in—

16 “(i) improving the compatible integra-  
17 tion of multimedia data concerning the  
18 Great Lakes ecosystem; and

19 “(ii) any effort to establish a com-  
20 prehensive multimedia data base for the  
21 Great Lakes ecosystem; and

22 “(F) shall ensure that the results, findings,  
23 and information regarding Great Lakes re-  
24 search programs conducted or sponsored by the  
25 Federal Government are disseminated in a

1           timely manner, and in useful forms, to inter-  
2           ested persons, using to the maximum extent  
3           practicable mechanisms in existence on the date  
4           of the dissemination, such as the Great Lakes  
5           Research Inventory prepared by the Inter-  
6           national Joint Commission.

7           “(3) MEMBERSHIP.—

8                   “(A) IN GENERAL.—The Council shall con-  
9           sist of 1 research manager with extensive  
10          knowledge of, and scientific expertise and expe-  
11          rience in, the Great Lakes ecosystem from each  
12          of the following agencies and instrumentalities:

13                   “(i) The Agency.

14                   “(ii) The National Oceanic and At-  
15          mospheric Administration.

16                   “(iii) The National Biological Service.

17                   “(iv) The United States Fish and  
18          Wildlife Service.

19                   “(v) Any other Federal agency or in-  
20          strumentality that expends \$1,000,000 or  
21          more for a fiscal year on Great Lakes re-  
22          search.

23                   “(vi) Any other Federal agency or in-  
24          strumentality that a majority of the Coun-

1           cil membership determines should be rep-  
2           resented on the Council.

3           “(B) NONVOTING MEMBERS.—At the re-  
4           quest of a majority of the Council membership,  
5           any person who is a representative of a Federal  
6           agency or instrumentality not described in sub-  
7           paragraph (A) or any person who is not a Fed-  
8           eral employee may serve as a nonvoting member  
9           of the Council.

10          “(4) CHAIRPERSON.—The chairperson of the  
11          Council shall be a member of the Council from an  
12          agency specified in clause (i), (ii), or (iii) of para-  
13          graph (3)(A) who is elected by a majority vote of the  
14          members of the Council. The chairperson shall serve  
15          as chairperson for a period of 2 years. A member of  
16          the Council may not serve as chairperson for more  
17          than 2 consecutive terms.

18          “(5) EXPENSES.—While performing official du-  
19          ties as a member of the Council, a member shall be  
20          allowed travel or transportation expenses under sec-  
21          tion 5703 of title 5, United States Code.

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

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

4           “(B) on written request of the chairperson  
5           of the Council, may make available, on a reim-  
6           bursable basis or otherwise, such personnel,  
7           services, or facilities as may be necessary to as-  
8           sist the Council in carrying out the duties of  
9           the Council under this section; and

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

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

19          “(8) REIMBURSEMENT FOR REQUESTED ACTIVI-  
20          TIES.—Each Federal agency or instrumentality rep-  
21          resented on the Council may reimburse another Fed-  
22          eral agency or instrumentality or a non-Federal en-  
23          tity for costs associated with activities authorized  
24          under this subsection that are carried out by the

1 other agency, instrumentality, or entity at the re-  
2 quest of the Council.

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

6 “(10) EFFECT ON OTHER LAW.—Nothing in  
7 this subsection affects the authority of any Federal  
8 agency or instrumentality, under any law, to under-  
9 take Great Lakes research activities.”;

10 (C) in subsection (e)—

11 (i) in paragraph (1) by striking “the  
12 Program Office and the Research Office  
13 shall prepare a joint research plan” and in-  
14 serting “the Program Office, in consulta-  
15 tion with the Council, shall prepare a re-  
16 search plan”; and

17 (ii) in paragraph (3)(A) by striking  
18 “the Research Office, the Agency for Toxic  
19 Substances and Disease Registry, and  
20 Great Lakes States” and inserting “the  
21 Council, the Agency for Toxic Substances  
22 and Disease Registry, and Great Lakes  
23 States,”; and

24 (D) in subsection (h)—

1 (i) by adding “and” at the end of  
2 paragraph (1);

3 (ii) by striking “; and” at the end of  
4 paragraph (2) and inserting a period; and

5 (iii) by striking paragraph (3).

6 (2) CONFORMING AMENDMENT.—The second  
7 sentence of section 403(a) of the Marine Protection,  
8 Research, and Sanctuaries Act of 1972 (16 U.S.C.  
9 1447b(a)) is amended by striking “Great Lakes Re-  
10 search Office authorized under” and inserting  
11 “Great Lakes Research Council established by”.

12 (b) CONSISTENCY OF PROGRAMS WITH FEDERAL  
13 GUIDANCE.—Section 118(c)(2)(C) (33 U.S.C.  
14 1268(c)(2)(C)) is amended by adding at the end the fol-  
15 lowing: “For purposes of this section, a State’s standards,  
16 policies, and procedures shall be considered consistent  
17 with such guidance if the standards, policies, and proce-  
18 dures are based on scientifically defensible judgments and  
19 policy choices made by the State after consideration of the  
20 guidance and provide an overall level of protection com-  
21 parable to that provided by the guidance, taking into ac-  
22 count the specific circumstances of the State’s waters.”.

23 (c) REAUTHORIZATION OF ASSESSMENT AND REME-  
24 DIATION OF CONTAMINATED SEDIMENTS PROGRAM.—

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

3           “(D) REAUTHORIZATION OF ASSESSMENT  
4           AND REMEDIATION OF CONTAMINATED SEDI-  
5           MENTS PROGRAM.—

6                   “(i) IN GENERAL.—The Adminis-  
7                   trator, acting through the Program Office,  
8                   in consultation and cooperation with the  
9                   Assistant Secretary of the Army having re-  
10                   sponsibility for civil works, shall conduct at  
11                   least 3 pilot projects involving promising  
12                   technologies and practices to remedy con-  
13                   taminated sediments (including at least 1  
14                   full-scale demonstration of a remediation  
15                   technology) at sites in the Great Lakes  
16                   System, as the Administrator determines  
17                   appropriate.

18                   “(ii) SELECTION OF SITES.—In select-  
19                   ing sites for the pilot projects, the Admin-  
20                   istrator shall give priority consideration  
21                   to—

22                           “(I) the Ashtabula River in Ohio;

23                           “(II) the Buffalo River in New

24                           York;



1 “(III) Duluth and Superior Har-  
2 bor in Minnesota;

3 “(IV) the Fox River in Wiscon-  
4 sin;

5 “(V) the Grand Calumet River in  
6 Indiana; and

7 “(VI) Saginaw Bay in Michigan.

8 “(iii) DEADLINES.—In carrying out  
9 this subparagraph, the Administrator  
10 shall—

11 “(I) not later than 18 months  
12 after the date of the enactment of this  
13 subparagraph, identify at least 3 sites  
14 and the technologies and practices to  
15 be demonstrated at the sites (includ-  
16 ing at least 1 full-scale demonstration  
17 of a remediation technology); and

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

23 “(iv) ADDITIONAL PROJECTS.—The  
24 Administrator, acting through the Pro-  
25 gram Office, in consultation and coopera-

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

8           “(v) EXECUTION OF PROJECTS.—The  
9           Administrator may cooperate with the As-  
10          sistant Secretary of the Army having re-  
11          sponsibility for civil works to plan, engi-  
12          neer, design, and execute pilot projects  
13          under this subparagraph.

14          “(vi) NON-FEDERAL CONTRIBU-  
15          TIONS.—The Administrator may accept  
16          non-Federal contributions to carry out  
17          pilot projects under this subparagraph.

18          “(vii) AUTHORIZATION OF APPROPRIA-  
19          TIONS.—There are authorized to be appro-  
20          priated to carry out this subparagraph  
21          \$3,500,000 for each of fiscal years 1996  
22          through 2000.

23          “(E) TECHNICAL INFORMATION AND AS-  
24          SISTANCE.—

1           “(i) IN GENERAL.—The Adminis-  
2           trator, acting through the Program Office,  
3           may provide technical information and as-  
4           sistance involving technologies and prac-  
5           tices for remediation of contaminated sedi-  
6           ments to persons that request the informa-  
7           tion or assistance.

8           “(ii) TECHNICAL ASSISTANCE PRIOR-  
9           ITIES.—In providing technical assistance  
10          under this subparagraph, the Adminis-  
11          trator, acting through the Program Office,  
12          shall give special priority to requests for  
13          integrated assessments of, and rec-  
14          ommendations regarding, remediation tech-  
15          nologies and practices for contaminated  
16          sediments at Great Lakes areas of concern.

17          “(iii) COORDINATION WITH OTHER  
18          DEMONSTRATIONS.—The Administrator  
19          shall—

20                 “(I) coordinate technology dem-  
21                 onstrations conducted under this sub-  
22                 paragraph with other federally as-  
23                 sisted demonstrations of contaminated  
24                 sediment remediation technologies;  
25                 and

1                   “(II) share information from the  
2                   demonstrations conducted under this  
3                   subparagraph with the other dem-  
4                   onstrations.

5                   “(iv) OTHER SEDIMENT REMEDIATION  
6                   ACTIVITIES.—Nothing in this subpara-  
7                   graph limits the authority of the Adminis-  
8                   trator to carry out sediment remediation  
9                   activities under other laws.

10                   “(v) AUTHORIZATION OF APPROPRIA-  
11                   TIONS.—There are authorized to be appro-  
12                   priated to carry out this subparagraph  
13                   \$1,000,000 for each of fiscal years 1996  
14                   through 2000.”.

15                   (d) AUTHORIZATION OF APPROPRIATIONS.—

16                   (1) RESEARCH AND MANAGEMENT.—Section  
17                   118(e)(3)(B) (33 U.S.C. 1268(e)(3)(B)) is amended  
18                   by inserting before the period at the end the follow-  
19                   ing: “, such sums as may be necessary for fiscal year  
20                   1995, and \$4,000,000 per fiscal year for each of fis-  
21                   cal years 1996, 1997, and 1998”.

22                   (2) GREAT LAKES PROGRAMS.—Section 118(h)  
23                   (33 U.S.C. 1268(h)) is amended—

24                   (A) by striking “and” before  
25                   “\$25,000,000”; and

1 (B) by inserting before the period at the  
2 end of the first sentence the following: “, such  
3 sums as may be necessary for fiscal years 1992  
4 through 1995, and \$17,500,000 per fiscal year  
5 for each of fiscal years 1996 through 2000”.

6 **TITLE II—CONSTRUCTION**  
7 **GRANTS**

8 **SEC. 201. USES OF FUNDS.**

9 (a) NONPOINT SOURCE PROGRAM.—Section  
10 201(g)(1) (33 U.S.C. 1281(g)(1)) is amended by striking  
11 the period at the end of the first sentence and all that  
12 follows through the period at the end of the last sentence  
13 and inserting the following: “and for any purpose for  
14 which a grant may be made under sections 319(h) and  
15 319(i) of this Act (including any innovative and alter-  
16 native approaches for the control of nonpoint sources of  
17 pollution).”.

18 (b) RETROACTIVE ELIGIBILITY.—Section 201(g)(1)  
19 is further amended by adding at the end the following:  
20 “The Administrator, with the concurrence of the States,  
21 shall develop procedures to facilitate and expedite the ret-  
22 roactive eligibility and provision of grant funding for facili-  
23 ties already under construction.”.

1 **SEC. 202. ADMINISTRATION OF CLOSEOUT OF CONSTRUC-**  
2 **TION GRANT PROGRAM.**

3 Section 205(g)(1) (33 U.S.C. 1285(g)(1)) is amended  
4 by adding at the end the following: “The Administrator  
5 may negotiate an annual budget with a State for the pur-  
6 pose of administering the closeout of the State’s construc-  
7 tion grants program under this title. Sums made available  
8 for administering such closeout shall be subtracted from  
9 amounts remaining available for obligation under the  
10 State’s construction grant program under this title.”.

11 **SEC. 203. SEWAGE COLLECTION SYSTEMS.**

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

13 (1) in clause (1) by striking “an existing collec-  
14 tion system” and inserting “a collection system ex-  
15 isting on the date of the enactment of the Clean  
16 Water Amendments of 1995”; and

17 (2) in clause (2)—

18 (A) by striking “an existing community”  
19 and inserting “a community existing on such  
20 date of enactment”; and

21 (B) by striking “sufficient existing” and  
22 inserting “sufficient capacity existing on such  
23 date of enactment”.

24 **SEC. 204. TREATMENT WORKS DEFINED.**

25 (a) INCLUSION OF OTHER LANDS.—Section  
26 212(2)(A) (33 U.S.C. 1292(2)(A)) is amended—

1 (1) by striking “any works, including site”;

2 (2) by striking “is used for ultimate” and in-  
3 sserting “will be used for ultimate”; and

4 (3) by inserting before the period at the end the  
5 following: “and acquisition of other lands, and inter-  
6 ests in lands, which are necessary for construction”.

7 (b) **POLICY ON COST EFFECTIVENESS.**—Section  
8 218(a) (33 U.S.C. 1298(a)) is amended by striking “com-  
9 bination of devices and systems” and all that follows  
10 through “from such treatment;” and inserting “treatment  
11 works;”.

12 **SEC. 205. VALUE ENGINEERING REVIEW.**

13 Section 218(c) (33 U.S.C. 1298(c)) is amended by  
14 striking “\$10,000,000” and inserting “\$25,000,000”.

15 **SEC. 206. GRANTS FOR WASTEWATER TREATMENT.**

16 (a) **COASTAL LOCALITIES.**—The Administrator shall  
17 make grants under title II of the Federal Water Pollution  
18 Control Act to appropriate instrumentalities for the pur-  
19 pose of construction of treatment works (including com-  
20 bined sewer overflow facilities) to serve coastal localities.  
21 No less than \$10,000,000 of the amount of such grants  
22 shall be used for water infrastructure improvements in  
23 New Orleans, no less than \$3,000,000 of the amount of  
24 such grants shall be used for water infrastructure im-  
25 provements in Bristol County, Massachusetts, and no less

1 than  $\frac{1}{3}$  of the amount of such grants shall be used to  
2 assist localities that meet both of the following criteria:

3 (1) NEED.—A locality that has over  
4 \$2,000,000,000 in category I treatment needs docu-  
5 mented and accepted in the Environmental Protec-  
6 tion Agency's 1992 Needs Survey database as of  
7 February 4, 1993.

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

15 (b) FEDERAL SHARE.—Notwithstanding section  
16 202(a)(1) of the Federal Water Pollution Control Act, the  
17 Federal share of grants under subsection (a) shall be 80  
18 percent of the cost of construction, and the non-Federal  
19 share shall be 20 percent of the cost of construction.

20 (c) SMALL COMMUNITIES.—The Administrator shall  
21 make grants to States for the purpose of providing assist-  
22 ance for the construction of treatment works and alter-  
23 native wastewater treatment systems to serve small com-  
24 munities as defined by the State; except that the term  
25 "small communities" may not include any locality with a



1 population greater than 75,000. Funds made available to  
2 carry out this subsection shall be allotted by the Adminis-  
3 trator to the States in accordance with the allotment for-  
4 mula contained in section 604(a) of the Federal Water  
5 Pollution Control Act.

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

## 15 **TITLE III—STANDARDS AND** 16 **ENFORCEMENT**

### 17 **SEC. 301. EFFLUENT LIMITATIONS.**

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

20 (1) in paragraph (1)(C) by striking “not later  
21 than July 1, 1977,”;

22 (2) by striking the period at the end and insert-  
23 ing “within a reasonable period of time as deter-  
24 mined by the Administrator or the State, as appro-

1        appropriate, considering facility planning, design, con-  
2        struction, and other implementation factors;” and

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

5        (b) MODIFICATIONS FOR NONCONVENTIONAL POL-  
6        LUTANTS.—

7                (1) GENERAL AUTHORITY.—Section 301(g)(1)  
8        (33 U.S.C. 1311(g)(1)) is amended by striking  
9        “(when determined by the Administrator to be a pol-  
10        lutant covered by subsection (b)(2)(F)) and any  
11        other pollutant which the Administrator lists under  
12        paragraph (4) of this subsection” and inserting “and  
13        any other pollutant covered by subsection  
14        (b)(2)(F)”.

15                (2) PROCEDURAL REQUIREMENTS FOR LISTING  
16        AND REMOVAL OF POLLUTANTS.—Section 301(g)  
17        (33 U.S.C. 1311(g)) is further amended by striking  
18        paragraphs (4) and (5).

19                (c) COAL REMINING.—Section 301(p)(2) (33 U.S.C.  
20        1311(p)(2)) is amended by inserting before the period at  
21        the end the following: “; except where monitoring dem-  
22        onstrates that the receiving waters do not meet such water  
23        quality standards prior to commencement of remining and  
24        where the applicant submits a plan which demonstrates  
25        to the satisfaction of the Administrator or the State, as

1 the case may be, that identified measures will be utilized  
2 to improve the existing water quality of the receiving wa-  
3 ters”.

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

7 “(5) PREEXISTING COAL REMINING OPER-  
8 ATIONS.—Any operator of a coal mining operation  
9 who conducted remining at a site on which coal min-  
10 ing originally was conducted before the effective date  
11 of the Surface Mining Control and Reclamation Act  
12 of 1977 shall be deemed to be in compliance with  
13 sections 301, 302, 306, 307, and 402 of this Act  
14 if—

15 “(A) such operator commenced remining at  
16 such operation prior to the adoption of this sub-  
17 section in a State program approved under sec-  
18 tion 402 and performed such remining under a  
19 permit pursuant to the Surface Mining Control  
20 and Reclamation Act of 1977; and

21 “(B) the post-mining levels of pollutants  
22 (other than pH) discharged from such operation  
23 do not exceed the levels of pollutants discharged  
24 from the remined area before the coal remining  
25 operation began and the post-mining pH levels

1 of the discharges from the remined area are not  
2 reduced below the pH levels of the discharges  
3 from the remined area before the coal remining  
4 operation began.”.

5 **SEC. 302. POLLUTION PREVENTION OPPORTUNITIES.**

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

9 “(k) INNOVATIVE PRODUCTION PROCESSES, TECH-  
10 NOLOGIES, AND METHODS.—

11 “(1) IN GENERAL.—In the case of any point  
12 source subject to a permit under section 402, the  
13 Administrator, with the consent of the State in  
14 which the point source is located, or the State in  
15 consultation with the Administrator, in the case of  
16 a State with an approved program under section  
17 402, may, at the request of the permittee and after  
18 public notice and opportunity for comment, extend  
19 the deadline for the point source to comply with any  
20 limitation established pursuant to subsection  
21 (b)(1)(A), (b)(2)(A), or (b)(2)(E) and make other  
22 appropriate modifications to the conditions of the  
23 point source permit, for the purpose of encouraging  
24 the development and use of an innovative pollution  
25 prevention technology (including an innovative pro-

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

4               “(A) achieve an effluent reduction which is  
5               greater than that required by the limitation  
6               otherwise applicable;

7               “(B) meet the applicable effluent limitation  
8               to water while achieving a reduction of total  
9               emissions to other media which is greater than  
10              that required by the otherwise applicable emis-  
11              sions limitations for the other media;

12              “(C) meet the applicable effluent limitation  
13              to water while achieving a reduction in energy  
14              consumption; or

15              “(D) achieve the required reduction with  
16              the potential for significantly lower costs than  
17              the systems determined by the Administrator to  
18              be economically achievable.

19              “(2) LIMITATION AND NOTICE.—If the Admin-  
20              istrator or a State extends the deadline for point  
21              source compliance and encourages the development  
22              and use of an innovative pollution prevention tech-  
23              nology under paragraph (1), the Administrator or  
24              State shall encourage, to the maximum extent prac-

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

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

12           “(4) CONSEQUENCES OF FAILURE.—In deter-  
13       mining the amount of any civil or administrative  
14       penalty pursuant to section 309(d) or 309(g) for any  
15       violations of a section 402 permit during the exten-  
16       sion period referred to in paragraph (1) that are  
17       caused by the unexpected failure of an innovative  
18       process, technology, or method, a court or the Ad-  
19       ministrator, as appropriate, shall take into account  
20       the permittee’s good-faith efforts to implement the  
21       innovation and to comply with any interim limita-  
22       tions and may reduce or eliminate the penalty for  
23       such violation.

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

1       istrator shall review, analyze, and compile in a re-  
2       port information on innovative and alternative tech-  
3       nologies which are available for preventing and re-  
4       ducing pollution of navigable waters, submit such re-  
5       port to Congress, and publish in the Federal Reg-  
6       ister a summary of such report and a notice of the  
7       availability of such report. The Administrator shall  
8       annually update the report prepared under this  
9       paragraph, submit the updated report to Congress,  
10      and publish in the Federal Register a summary of  
11      the updated report and a notice of its availability.

12           “(6) LIMITATION ON STATUTORY CONSTRUC-  
13      TION.—Nothing in this subsection shall be construed  
14      to authorize the Administrator or a State to enforce,  
15      place conditions on, or otherwise regulate emissions  
16      into the air or the treatment, storage, or disposal of  
17      solid waste or require or enforce conditions on the  
18      manufacturing or processing of a chemical substance  
19      or mixture in any permit issued under this Act.”.

20      (b) POLLUTION PREVENTION PROGRAMS.—Section  
21 301 (33 U.S.C. 1311) is amended—

22           (1) in subsection (l) by striking “subsection  
23      (n)” and inserting “subsections (n), (q), and (r)”;  
24      and

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

1 “(q) POLLUTION PREVENTION PROGRAMS.—

2 “(1) IN GENERAL.—The Administrator (with  
3 the concurrence of the State) or a State with an ap-  
4 proved program under section 402, at the request of  
5 the permittee and after public notice and an oppor-  
6 tunity for comment, may issue a permit under sec-  
7 tion 402 which modifies the requirements of sub-  
8 section (b)(1)(A), (b)(2)(A), or (b)(2)(E) of this sec-  
9 tion or section 306 and makes appropriate modifica-  
10 tions to the conditions of the permit, or may modify  
11 the requirements of section 307, if the Adminis-  
12 trator or State determines that pollution prevention  
13 measures or practices (including recycling, source re-  
14 duction, and other measures to reduce discharges or  
15 other releases of pollutants from the facility to the  
16 environment beyond those otherwise required by law)  
17 together with such modifications will achieve an  
18 overall reduction in emissions to the environment  
19 (including emissions to water and air and disposal  
20 of solid wastes) from the facility at which the per-  
21 mitted discharge is located that is greater than  
22 would otherwise be achievable if the source complied  
23 with the requirements of subsection (b)(1)(A),  
24 (b)(2)(A), or (b)(2)(E) or section 306 or 307 and



1 will result in an overall net benefit to the environ-  
2 ment.

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

12 “(3) NONEXTENSION OF MODIFICATION.—Upon  
13 expiration of a modification that is not extended fur-  
14 ther under paragraph (2), the source shall have a  
15 reasonable period of time, not to exceed 2 years, to  
16 come into compliance with otherwise applicable re-  
17 quirements of this Act.

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

22 “(A) will cause a receiving body of water  
23 that is meeting its designated use for all pollut-  
24 ants to no longer meet such use;

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

4           “(C) will cause the introduction of pollut-  
5           ants into a publicly owned treatment works that  
6           interferes with, passes through, or is otherwise  
7           incompatible with such works or will cause such  
8           works to violate its permit under section 402 of  
9           this Act.

10          “(5) GUIDANCE.—Not later than 270 days  
11          after the date of the enactment of this subsection,  
12          the Administrator shall publish guidance for deter-  
13          mining whether a modification of an otherwise appli-  
14          cable limitation or standard under this subsection  
15          will achieve an overall reduction in emissions to the  
16          environment and result in an overall net benefit to  
17          the environment. In developing such guidance, the  
18          Administrator shall consult with the States and  
19          other interested parties.

20          “(6) LIMITATION ON STATUTORY CONSTRUC-  
21          TION.—Nothing in this subsection shall be construed  
22          to authorize the Administrator or a State to enforce,  
23          place conditions on, or otherwise regulate emissions  
24          into the air or the treatment, storage, or disposal of  
25          solid waste or require or enforce conditions on the

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

3 “(7) REPORT.—Not later than 3 years after the  
4 date of the enactment of this subsection, the Admin-  
5 istrator shall submit to Congress a report on the im-  
6 plementation of this subsection and the emissions re-  
7 ductions achieved as a result of modifications made  
8 pursuant to this subsection.”.

9 (c) POLLUTION REDUCTION AGREEMENTS.—Section  
10 301 is further amended by adding at the end the following:

11 “(r) POLLUTION REDUCTION AGREEMENTS.—

12 “(1) IN GENERAL.—The Administrator (with  
13 the concurrence of the State) or a State with an ap-  
14 proved program under section 402, after public no-  
15 tice and an opportunity for comment, may issue a  
16 permit under section 402 which modifies the require-  
17 ments of subsection (b) of this section or section 306  
18 and makes appropriate modifications to the condi-  
19 tions of the permit, or may modify the requirements  
20 of section 307, if the Administrator or State deter-  
21 mines that the owner or operator of the source of  
22 the discharge has entered into a binding contractual  
23 agreement with any other source of discharge in the  
24 same watershed to implement pollution reduction  
25 controls or measures beyond those otherwise re-

1       quired by law and that the agreement is being imple-  
2       mented through modifications of a permit issued  
3       under section 402 to the other source, by modifica-  
4       tions of the requirements of section 307 applicable  
5       to the other source, or by nonpoint source control  
6       practices and measures under section 319 applicable  
7       to the other source. The Administrator or State may  
8       modify otherwise applicable requirements pursuant  
9       to this section whenever the Administrator or State  
10      determines that such pollution reduction control or  
11      measures will result collectively in an overall reduc-  
12      tion in discharges to the watershed that is greater  
13      than would otherwise be achievable if the parties to  
14      the pollution reduction agreement each complied  
15      with applicable requirements of subsection (b), sec-  
16      tion 306 or 307 resulting in a net benefit to the wa-  
17      tershed.

18           “(2) NOTIFICATION TO AFFECTED STATES.—  
19      Before issuing or modifying a permit under this sub-  
20      section allowing discharges into a watershed that is  
21      within the jurisdiction of 2 or more States, the Ad-  
22      ministrator or State shall provide written notice of  
23      the proposed permit to all States with jurisdiction  
24      over the watershed. The Administrator or State shall  
25      not issue or modify such permit unless all States

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

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

15 “(4) NONEXTENSION OF MODIFICATION.—Upon  
16 expiration of a modification that is not extended fur-  
17 ther under paragraph (3), the source shall have a  
18 reasonable period of time, not to exceed 2 years, to  
19 come into compliance with otherwise applicable re-  
20 quirements of this Act.

21 “(5) LIMITATION ON STATUTORY CONSTRUC-  
22 TION.—Nothing in this subsection shall be construed  
23 to authorize the Administrator or a State, as appro-  
24 priate, to compel trading among sources or to im-  
25 pose nonpoint source control practices without the

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

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

13 “(A) will cause a receiving body of water  
14 that is meeting its designated use for all pollut-  
15 ants to no longer meet such use;

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

19 “(C) will cause the introduction of pollut-  
20 ants into a publicly owned treatment works that  
21 interferes with, passes through, or is otherwise  
22 incompatible with such works or will cause such  
23 works to violate its permit under section 402 of  
24 this Act.

1           “(7) GUIDANCE.—Not later than 270 days  
2 after the date of the enactment of this subsection,  
3 the Administrator shall publish guidance for deter-  
4 mining whether a modification of an otherwise appli-  
5 cable limitation or standard under this subsection  
6 will achieve an overall reduction in discharges to the  
7 watershed and result in an overall net benefit to the  
8 environment. In developing such guidance, the Ad-  
9 ministrator shall consult with the States and other  
10 interested parties.

11           “(8) REPORT.—Not later than 3 years after the  
12 date of the enactment of this subsection, the Admin-  
13 istrator shall submit a report to Congress on the im-  
14 plementation of paragraph (1) and the discharge re-  
15 ductions achieved as a result of modifications made  
16 pursuant to paragraph (1).”.

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

19           (1) in subparagraph (D)—

20                   (A) by inserting “301(q), 301(r),” after  
21                   “301(n),”; and

22                   (B) by striking “or” the last place it ap-  
23                   pears;

24           (2) in subparagraph (E) by striking the period  
25           at the end and inserting “; or”; and

1           (3) by inserting after subparagraph (E) the fol-  
2           lowing:

3                   “(F) the permittee is taking pollution pre-  
4                   vention or water conservation measures that  
5                   produce a net environmental benefit, including,  
6                   but not limited to, measures that result in the  
7                   substitution of one pollutant for another pollut-  
8                   ant; increase the concentration of a pollutant  
9                   while decreasing the discharge flow; or increase  
10                  the discharge of a pollutant or pollutants from  
11                  one or more outfalls at a permittee’s facility,  
12                  when accompanied by offsetting decreases in  
13                  the discharge of a pollutant or pollutants from  
14                  other outfalls at the permittee’s facility.”.

15           (e) ANTIDEGRADATION REVIEW.—Section 303(d)  
16 (33 U.S.C. 1313(d)) is amended by adding at the end the  
17 following:

18                   “(5) ANTIDEGRADATION REVIEW.—The Admin-  
19                   istrator may not require a State, in implementing  
20                   the antidegradation policy established under this sec-  
21                   tion, to conduct an antidegradation review in the  
22                   case of—

23                           “(A) increases in a discharge which are au-  
24                           thorized under section 301(g), 301(k), 301(q),  
25                           301(r), or 301(t);



1           “(B) increases in the concentration of a  
2 pollutant in a discharge caused by a reduction  
3 in wastewater flow;

4           “(C) increases in the discharge of a pollut-  
5 ant or pollutants from one or more outfalls at  
6 a permittee’s facility, when accompanied by off-  
7 setting decreases in the discharge of a pollutant  
8 or pollutants from other outfalls at the permit-  
9 tee’s facility;

10           “(D) reissuance of a permit where there is  
11 no increase in existing effluent limitations and,  
12 if a new effluent limitation is being added to  
13 the permit, where the new limitation is for a  
14 pollutant that is newly found in an existing dis-  
15 charge due solely to improved monitoring meth-  
16 ods; or

17           “(E) a new or increased discharge which is  
18 temporary or short-term or which the State de-  
19 termines represents an insignificant increased  
20 pollutant loading.”.

21           (f) INNOVATIVE PRETREATMENT PRODUCTION  
22 PROCESSES.—Subsection (e) of section 307 (33 U.S.C.  
23 1317(e)) is amended to read as follows:

24           “(e) INNOVATIVE PRETREATMENT PRODUCTION  
25 PROCESSES, TECHNOLOGIES, AND METHODS.—

1           “(1) IN GENERAL.—In the case of any facility  
2 that proposes to comply with the national categorical  
3 pretreatment standards developed under subsection  
4 (b) by applying an innovative pollution prevention  
5 technology (including an innovative production pro-  
6 cess change, innovative pollution control technology,  
7 or innovative recycling method) that meets the re-  
8 quirements of section 301(k), the Administrator or  
9 the State, in consultation with the Administrator, in  
10 the case of a State which has a pretreatment pro-  
11 gram approved by the Administrator, upon applica-  
12 tion of the facility and with the concurrence of the  
13 treatment works into which the facility introduces  
14 pollutants, may extend the deadlines for compliance  
15 with the applicable national categorical pretreatment  
16 standards established under this section and make  
17 other appropriate modifications to the facility’s  
18 pretreatment requirements if the Administrator or  
19 the State, in consultation with the Administrator, in  
20 the case of a State which has a pretreatment pro-  
21 gram approved by the Administrator determines  
22 that—

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

1           tion as are necessary to ensure that the modi-  
2           fication does not cause or contribute to a viola-  
3           tion by the treatment works under section 402  
4           or a violation of section 405;

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

11          “(C) the proposed extensions or modifica-  
12          tions will not cause or contribute to any viola-  
13          tion of a permit granted to the treatment works  
14          under section 402, any violation of section 405,  
15          or a pass through of pollutants such that water  
16          quality standards are exceeded in the body of  
17          water into which the treatment works dis-  
18          charges.

19          “(2) INTERIM LIMITATIONS.—A modification  
20          granted pursuant to paragraph (1) shall include in-  
21          terim standards that shall apply during the tem-  
22          porary period of the modification and shall be the  
23          more stringent of—

1           “(A) those necessary to ensure that the  
2 discharge will not interfere with the operation  
3 of the treatment works;

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

9           “(C) the limits established in the pre-  
10 viously applicable control mechanism, in those  
11 cases in which the limit from which a modifica-  
12 tion is being sought is more stringent than the  
13 limit established in a previous control mecha-  
14 nism applicable to such source.

15           “(3) DURATION OF EXTENSIONS AND MODI-  
16 FICATIONS.—The extension of the compliance dead-  
17 lines and the modified pretreatment requirements es-  
18 tablished pursuant to paragraph (1) shall not extend  
19 beyond the period necessary for the owner to install  
20 and use the innovative process, technology, or meth-  
21 od in full-scale production operation, but in no case  
22 shall the compliance extensions and modified re-  
23 quirements extend beyond 3 years from the date for  
24 compliance with the otherwise applicable standards.

1           “(4) CONSEQUENCES OF FAILURE.—In deter-  
2           mining the amount of any civil or administrative  
3           penalty pursuant to section 309(d) or 309(g) for any  
4           pretreatment violations, or violations by a publicly  
5           owned treatment works, caused by the unexpected  
6           failure of an innovative process, technology, or meth-  
7           od, a court or the Administrator, as appropriate,  
8           shall reduce, or eliminate, the penalty amount for  
9           such violations provided the facility made good-faith  
10          efforts both to implement the innovation and to com-  
11          ply with the interim standards and, in the case of  
12          a publicly owned treatment works, good-faith efforts  
13          were made to implement the pretreatment pro-  
14          gram.”.

15 **SEC. 303. WATER QUALITY STANDARDS AND IMPLEMENTA-**  
16 **TION PLANS.**

17          (a) NO REASONABLE RELATIONSHIP.—Section  
18          303(b) (33 U.S.C. 1313(b)) is amended by adding at the  
19          end the following:

20                 “(3) NO REASONABLE RELATIONSHIP.—No  
21                 water quality standard shall be established under  
22                 this subsection where there is no reasonable relation-  
23                 ship between the costs and anticipated benefits of  
24                 attaining such standard.”.

25          (b) REVISION OF STATE STANDARDS.—

1           (1) REVIEW OF REVISIONS BY THE ADMINIS-  
2 TRATOR.—Section 303(c)(1) is amended by striking  
3 “three” and all that follows through “1972” and in-  
4 serting the following: “5-year period beginning on  
5 the date of the enactment of the Clean Water  
6 Amendments of 1995 and, for criteria that are re-  
7 vised by the Administrator pursuant to section  
8 304(a), on or before the 180th day after the date of  
9 such revision by the Administrator”.

10           (2) FACTORS.—Section 303(c) (33 U.S.C.  
11 1313(c)) is amended by striking paragraph (2)(A)  
12 and inserting the following:

13           “(2) STATE ADOPTION OF WATER QUALITY  
14 STANDARDS.—

15           “(A) IN GENERAL.—

16           “(i) SUBMISSION TO ADMINIS-  
17 TRATOR.—Whenever the State revises or  
18 adopts a new water quality standard, such  
19 standard shall be submitted to the Admin-  
20 istrator.

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

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

3 “(iii) PROTECTION OF HUMAN  
4 HEALTH.—The revised or new standard  
5 shall protect human health and the envi-  
6 ronment and enhance water quality.

7 “(iv) DEVELOPMENT OF STAND-  
8 ARDS.—In developing revised or new  
9 standards, the State may consider informa-  
10 tion reasonably available on the likely so-  
11 cial, economic, energy use, and environ-  
12 mental cost associated with attaining such  
13 standards in relation to the benefits to be  
14 attained. The State may provide a descrip-  
15 tion of the considerations used in the es-  
16 tablishment of the standards.

17 “(v) RECORD OF STATE’S REVIEW.—  
18 The record of a State’s review under para-  
19 graph (1) of an existing standard or adop-  
20 tion of a new standard that includes water  
21 quality criteria issued or revised by the Ad-  
22 ministrator after the date of the enactment  
23 of this sentence shall contain available esti-  
24 mates of costs of compliance with the  
25 water quality criteria published by the Ad-

1            administrator under section 304(a)(12) and  
2            any comments received by the State on  
3            such estimate.

4            “(vi) LIMITATION ON STATUTORY  
5            CONSTRUCTION.—Nothing in this sub-  
6            section shall be construed to limit or delay  
7            the use of any guidance of the Adminis-  
8            trator interpreting water quality criteria to  
9            allow the use of a dissolved metals con-  
10           concentration measurement or similar adjust-  
11           ment in determining compliance with a  
12           water quality standard or establishing ef-  
13           fluent limitations.”.

14           (c) REVISION OF DESIGNATED USES.—Section  
15           303(c)(2) (33 U.S.C. 1313(c)(2)) is amended by adding  
16           at the end the following:

17           “(C) REVISION OF DESIGNATED USES.—  
18           “(i) REGULATIONS.—After consulta-  
19           tion with State officials and not later than  
20           1 year after the date of the enactment of  
21           this subparagraph, the Administrator shall  
22           propose, and not later than 2 years after  
23           such date of enactment shall issue, a revi-  
24           sion to the Administrator’s regulations re-



1           garding designation of uses of waters by  
2           States.

3           “(ii) WATERS NOT ATTAINING DES-  
4           IGNATED USES.—For navigable waters not  
5           attaining designated uses applicable to  
6           such waters for all pollutants, the Adminis-  
7           trator shall identify conditions that make  
8           attainment of the designated use infeasible  
9           and shall allow a State to modify the des-  
10          ignated use if the State determines that  
11          such condition or conditions are present  
12          with respect to a particular receiving  
13          water, or if the State determines that the  
14          costs of achieving the designated use are  
15          not justified by the benefits.

16          “(iii) MODIFICATION OF POINT  
17          SOURCE LIMITS.—Notwithstanding any  
18          other provision of this Act, water quality  
19          based limits applicable to point sources  
20          may be modified as appropriate to conform  
21          to any modified designated use under this  
22          section.”.

23          (d) CONSIDERATION OF INFLUENCE OF EXOTIC SPE-  
24          CIES.—Section 303(c)(2) is further amended by adding at  
25          the end the following:

1           “(D) CONSIDERATION OF INFLUENCE OF  
2 EXOTIC SPECIES.—In establishing, adopting, or  
3 reviewing standards or goals based upon fish-  
4 able or swimmable uses or uses to assure pro-  
5 tection or propagation of a balanced population  
6 of fish, shellfish, and wildlife, the State or the  
7 Administrator shall consider the influence of ex-  
8 otic or introduced species upon such standards,  
9 goals, or uses.

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

20                   “(i) the use and value of reclaimed  
21 wastewater for public water supplies;

22                   “(ii) the physical, chemical, and bio-  
23 logical conditions that influence water  
24 quality in the area subject to the stand-  
25 ards, including extremes of temperature,

1 water flow, turbidity, mineralization, salin-  
2 ity, and flooding; and

3 “(iii) whether the discharge of re-  
4 claimed wastewater will result in a net en-  
5 vironmental benefit to the watershed sub-  
6 ject to the standards.”.

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

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

14 **SEC. 304. USE OF BIOLOGICAL MONITORING.**

15 (a) LABORATORY BIOLOGICAL MONITORING CRI-  
16 TERIA.—Subparagraph (B) of section 303(c)(2) (33  
17 U.S.C. 1313(c)(2)) is amended—

18 (1) by inserting “CRITERIA FOR TOXIC POLLUT-  
19 ANTS.—” after “(B)”;

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

22 (3) by inserting after the third sentence the fol-  
23 lowing: “Criteria for whole effluent toxicity based on  
24 laboratory biological monitoring or assessment meth-  
25 ods shall employ an aquatic species that is indige-

1       nous to the type of waters, a species that is rep-  
2       resentative of such a species, or an appropriate spe-  
3       cies that indicates the toxicity of the effluent in the  
4       receiving waters and shall take into account the ac-  
5       cepted analytical variability associated with such  
6       methods in defining an exceedence of such criteria.”.

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

9       “(q) BIOLOGICAL MONITORING PROCEDURES.—

10           “(1) RESPONDING TO EXCEEDANCES.—If a  
11       permit issued under this section contains terms, con-  
12       ditions, or limitations requiring biological monitoring  
13       or whole effluent toxicity testing designed to meet  
14       criteria for whole effluent toxicity based on labora-  
15       tory biological monitoring or assessment methods de-  
16       scribed in section 303(c)(2)(B), the permit shall es-  
17       tablish procedures for responding to an exceedance  
18       of such criteria that includes analysis, identification,  
19       reduction, or, where feasible, elimination of any ef-  
20       fluent toxicity. The failure of a biological monitoring  
21       test or whole effluent toxicity test shall not result in  
22       a finding of a violation under this Act, unless it is  
23       demonstrated that the permittee has failed to com-  
24       ply with such procedures.

1           “(2) DISCONTINUANCE OF USE.—The permit  
2 shall allow the permittee to discontinue such proce-  
3 dures—

4           “(A) if the permittee is an entity, other  
5 than a publicly owned treatment works, if the  
6 permittee demonstrates to the permitting au-  
7 thority through a field bio-assessment study  
8 that a balanced and healthy population of  
9 aquatic species indigenous to the type of waters  
10 exists in the waters that are affected by the dis-  
11 charge, and if the applicable numerical water  
12 quality standards for specific pollutants are met  
13 for such waters; or

14           “(B) if the permittee is a publicly owned  
15 treatment works—

16           “(i) if the source or cause of such tox-  
17 icity cannot, after thorough investigation,  
18 be identified; or

19           “(ii) if the permittee makes to the  
20 permitting authority a demonstration de-  
21 scribed in subparagraph (A).”.

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

24           (1) by striking “, after” and all that follows  
25 through “1987,”; and

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

3 **SEC. 305. ARID AREAS.**

4           (a) CONSTRUCTED WATER CONVEYANCES.—Section  
5 303(c)(2) (33 U.S.C. 1313(c)(2)) is amended by adding  
6 at the end the following:

7                   “(F) STANDARDS FOR CONSTRUCTED  
8 WATER CONVEYANCES.—

9                           “(i) RELEVANT FACTORS.—If a State  
10 exercises jurisdiction over constructed  
11 water conveyances in establishing stand-  
12 ards under this section, the State may con-  
13 sider the following:

14                                   “(I) The existing and planned  
15 uses of water transported in a convey-  
16 ance system.

17                                   “(II) Any water quality impacts  
18 resulting from any return flow from a  
19 constructed water conveyance to navi-  
20 gable waters and the need to protect  
21 downstream users.

22                                   “(III) Management practices nec-  
23 essary to maintain the conveyance  
24 system.

1                   “(IV) State or regional water re-  
2                   sources management and water con-  
3                   servation plans.

4                   “(V) The authorized purpose for  
5                   the constructed conveyance.

6                   “(ii) RELEVANT USES.—If a State  
7                   adopts or reviews water quality standards  
8                   for constructed water conveyances, it shall  
9                   not be required to establish recreation,  
10                  aquatic life, or fish consumption uses for  
11                  such systems if the uses are not existing or  
12                  reasonably foreseeable or such uses impede  
13                  the authorized uses of the conveyance sys-  
14                  tem.”.

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

19                         “(9) CRITERIA AND GUIDANCE FOR EPHEM-  
20                         ERAL AND EFFLUENT-DEPENDENT STREAMS.—

21                                 “(A) DEVELOPMENT.—Not later than 2  
22                                 years after the date of the enactment of this  
23                                 paragraph, and after providing notice and op-  
24                                 portunity for public comment, the Adminis-  
25                                 trator shall develop and publish—

1           “(i) criteria for ephemeral and efflu-  
2           ent-dependent streams; and

3           “(ii) guidance to the States on devel-  
4           opment and adoption of water quality  
5           standards applicable to such streams.

6           “(B) FACTORS.—The criteria and guid-  
7           ance developed under subparagraph (A) shall  
8           take into account the limited ability of ephem-  
9           eral and effluent-dependent streams to support  
10          aquatic life and certain designated uses, shall  
11          include consideration of the role the discharge  
12          may play in maintaining the flow or level of  
13          such waters, and shall promote the beneficial  
14          use of reclaimed water pursuant to section  
15          101(a)(10).”.

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

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

24          “(21) The term ‘effluent-dependent stream’ means a  
25          stream or a segment thereof—



1           “(A) with respect to which the flow (based on  
2           the annual average expected flow, determined by cal-  
3           culating the average mode over a 10-year period) is  
4           primarily attributable to the discharge of treated  
5           wastewater;

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

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

12           “(22) The term ‘ephemeral stream’ means a stream  
13           or segments thereof that flows periodically in response to  
14           precipitation, snowmelt, or runoff.

15           “(23) The term ‘constructed water conveyance’  
16           means a manmade water transport system constructed for  
17           the purpose of transporting water in a waterway that is  
18           not and never was a natural perennial waterway.”.

19           **SEC. 306. TOTAL MAXIMUM DAILY LOADS.**

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

22                           “(C) TOTAL MAXIMUM DAILY LOADS.—

23   “(i) STATE DETERMINATION OF REA-  
24   SONABLE PROGRESS.—Each State shall es-  
25   tablish, to the extent and according to a

1 schedule the State determines is necessary  
2 to achieve reasonable progress toward the  
3 attainment or maintenance of water qual-  
4 ity standards, for the waters identified in  
5 paragraph (1)(A) of this subsection, and in  
6 accordance with the priority ranking, the  
7 total maximum daily load, for those pollut-  
8 ants which the Administrator identifies  
9 under section 304(a)(2) as suitable for  
10 such calculation.

11 “(ii) PHASED TOTAL MAXIMUM DAILY  
12 LOADS.—Total maximum daily loads may  
13 reflect load reductions the State expects  
14 will be realized over time resulting from  
15 anticipated implementation of best man-  
16 agement practices, storm water controls, or  
17 other nonpoint or point source controls; so  
18 long as by December 31, 2015, such loads  
19 are established at levels necessary to imple-  
20 ment the applicable water quality stand-  
21 ards with seasonal variations and a margin  
22 of safety.

23 “(iii) CONSIDERATIONS.—In establish-  
24 ing each load, the State shall consider the  
25 availability of scientifically valid data and

1 information, the projected reductions  
2 achievable by control measures or practices  
3 for all sources or categories of sources, and  
4 the relative cost-effectiveness of implement-  
5 ing such control measures or practices for  
6 such sources.”.

7 **SEC. 307. REVISION OF CRITERIA, STANDARDS, AND LIM-**  
8 **TATIONS.**

9 (a) REVISION OF WATER QUALITY CRITERIA.—

10 (1) FACTORS.—Section 304(a)(1) (33 U.S.C.  
11 1314(a)(1)) is amended—

12 (A) by striking “and (C)” and inserting  
13 “(C)”; and

14 (B) by striking the period at the end and  
15 inserting the following: “(D) on the organisms  
16 that are likely to be present in various  
17 ecosystems; (E) on the bioavailability of pollut-  
18 ants under various natural and man induced  
19 conditions; (F) on the magnitude, duration, and  
20 frequency of exposure reasonably required to in-  
21 duce the adverse effects of concern; and (G) on  
22 the bioaccumulation threat presented under var-  
23 ious natural conditions.”.

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

4           “(10) CERTIFICATION.—

5           “(A) IN GENERAL.—Not later than 5 years  
6 after the date of the enactment of this para-  
7 graph, and at least once every 5 years there-  
8 after, the Administrator shall publish a written  
9 certification that the criteria for water quality  
10 developed under paragraph (1) reflect the latest  
11 and best scientific knowledge.

12           “(B) UPDATING OF EXISTING CRITERIA.—

13 Not later than 90 days after the date of the en-  
14 actment of this paragraph, the Administrator  
15 shall publish a schedule for updating, by not  
16 later than 5 years after the date of the enact-  
17 ment of this paragraph, the criteria for water  
18 quality developed under paragraph (1) before  
19 the date of the enactment of this subsection.

20           “(C) DEADLINE FOR REVISION OF CER-

21 TAIN CRITERIA.—Not later than 1 year after  
22 the date of the enactment of this paragraph,  
23 the Administrator shall revise and publish cri-  
24 teria under paragraph (1) for ammonia, chronic  
25 whole effluent toxicity, and metals as necessary

1 to allow the Administrator to make the certifi-  
2 cation under subparagraph (A). In the case of  
3 ammonia, the Administrator shall revise the cri-  
4 teria only to the extent that the current criteria  
5 are more stringent than necessary to achieve  
6 the objectives of this Act. ”.

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

10 “(11) CONSIDERATION OF CERTAIN CONTAMI-  
11 NANTS.—In developing and revising criteria for  
12 water quality criteria under paragraph (1), the Ad-  
13 ministrator shall consider addressing, at a minimum,  
14 each contaminant regulated pursuant to section  
15 1412 of the Public Health Service Act (42 U.S.C.  
16 300g-1).”.

17 (c) COST ESTIMATE.—Section 304(a) (33 U.S.C.  
18 1314(a)) is further amended by adding at the end the fol-  
19 lowing:

20 “(12) COST ESTIMATE.—Whenever the Admin-  
21 istrator issues or revises a criteria for water quality  
22 under paragraph (1), the Administrator, after con-  
23 sultation with Federal and State agencies and other  
24 interested persons, shall develop and publish an esti-  
25 mate of the costs that would likely be incurred if

1 sources were required to comply with the criteria  
2 and an analysis to support the estimate. Such analy-  
3 sis shall meet the requirements relevant to the esti-  
4 mation of costs published in guidance issued under  
5 section 324(b).”.

6 (d) REVISION OF EFFLUENT LIMITATIONS.—

7 (1) ELIMINATION OF REQUIREMENT FOR AN-  
8 NUAL REVISION.—Section 304(b) (33 U.S.C.  
9 1314(b)) is amended in the matter preceding para-  
10 graph (1) by striking “and, at least annually there-  
11 after,” and inserting “and thereafter shall”.

12 (2) SPECIAL RULE.—Section 304(b) (33 U.S.C.  
13 1314(b)) is amended by striking the period at the  
14 end of the first sentence and inserting the following:  
15 “; except that guidelines issued under paragraph  
16 (1)(A) addressing pollutants identified pursuant to  
17 subsection (a)(4) shall not be revised after February  
18 15, 1995, to be more stringent unless such revised  
19 guidelines meet the requirements of paragraph  
20 (4)(A).”.

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

24 “(5) INDUSTRIAL PUBLICLY OWNED TREAT-  
25 MENT WORKS.—

1           “(A) GUIDELINES.—Not later than 18  
2 months after the date of the enactment of this  
3 paragraph, the Administrator, after consulta-  
4 tion with appropriate Federal and State agen-  
5 cies and other interested persons, shall publish  
6 guidelines for effluent limitations under section  
7 301 and sludge use and disposal requirements  
8 under section 405 applicable to publicly owned  
9 treatment works designed to treat a predomi-  
10 nance of industrial wastewater. Such guidelines  
11 shall take into account differences in constitu-  
12 ents, treatability, available technology proce-  
13 dures, and costs resulting from the fact that  
14 the publicly owned treatment works treat  
15 wastewater and manage sludge derived pre-  
16 dominantly from industrial sources.

17           “(B) PERMITS.—Following the issuance of  
18 guidelines under this paragraph, permits under  
19 section 402 for such publicly owned treatment  
20 works shall be derived using the guidelines is-  
21 sued under this paragraph in lieu of applying  
22 the regulations otherwise applicable to publicly  
23 owned treatment works promulgated under  
24 paragraph (1) of this subsection and section  
25 405(d).”.

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

4 “(1) PUBLICATION.—Not later than 1 year  
5 after the date of the enactment of the Clean Water  
6 Amendments of 1995, the Administrator shall pub-  
7 lish in the Federal Register a plan which shall—

8 “(A) identify categories of sources dis-  
9 charging pollutants for which guidelines under  
10 subsection (b)(2) of this section and section 306  
11 have not been previously published;

12 “(B) establish a schedule for determining  
13 whether such discharge presents a significant  
14 risk to human health and the environment and  
15 whether such risk is sufficient, when compared  
16 to other sources of pollutants in navigable wa-  
17 ters, to warrant regulation by the Adminis-  
18 trator; and

19 “(C) establish a schedule for issuance of  
20 effluent guidelines for those categories identi-  
21 fied pursuant to subparagraph (B).”.

22 (g) REVISION OF PRETREATMENT REQUIRE-  
23 MENTS.—Section 304(g)(1) (33 U.S.C. 1314(g)(1)) is  
24 amended by striking “and review at least annually there-



1 after and, if appropriate, revise” and insert “and there-  
2 after revise, as appropriate.”.

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

6 “(n) CENTRAL TREATMENT FACILITY EXEMP-  
7 TION.—The exemption from effluent guidelines for the  
8 Iron and Steel Manufacturing Point Source Category set  
9 forth in section 420.01(b) of title 40, Code of Federal Reg-  
10 ulations, for the facilities listed in such section shall re-  
11 main in effect for any facility that met the requirements  
12 of such section on or before July 26, 1982, until the Ad-  
13 ministrator develops alternative effluent guidelines for the  
14 facility.”.

15 **SEC. 308. PERSONNEL AND REPORTING.**

16 “(a) Permitting Boards.—Section 304(i)(2)(D) (33  
17 U.S.C. 1314(i)(2)(D)) is amended by striking “any per-  
18 son” and all that follows through the period at the end  
19 and inserting the following: “any person (other than a re-  
20 tiree or an employee or official of a city, county, or local  
21 governmental agency) who receives a significant portion  
22 of his or her income during the period of service on the  
23 board or body directly or indirectly from permit holders  
24 or applicants for a permit).”.

1 (b) REPORTING.—Section 305(b) (33 U.S.C.  
2 1315(b)) is amended—

3 (1) in paragraph (1) by striking the matter pre-  
4 ceding subparagraph (A) and inserting “Not later  
5 than 3 years after the date of the enactment of the  
6 Clean Water Amendments of 1995, and every 5  
7 years thereafter, each State shall prepare and sub-  
8 mit to the Administrator a report which shall in-  
9 clude—”; and

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

11 “(c) CONSOLIDATION OF REPORTING REQUIRE-  
12 MENTS.—A State may consolidate any of the reporting re-  
13 quirements of this Act that relate to ambient water quality  
14 into the report required under this section.”.

15 **SEC. 309. SECONDARY TREATMENT.**

16 (a) COASTAL DISCHARGES.—Section 304(d) (33  
17 U.S.C. 1314(d)) is amended by adding at the end the fol-  
18 lowing:

19 “(6) COASTAL DISCHARGES.—For purposes of  
20 this subsection, any municipal wastewater treatment  
21 facility shall be deemed the equivalent of a second-  
22 ary treatment facility if each of the following re-  
23 quirements is met:

24 “(A) The facility employs chemically en-  
25 hanced primary treatment.

1           “(B) The facility, on the date of the enact-  
2           ment of this paragraph, discharges through an  
3           ocean outfall into an open marine environment  
4           greater than 4 miles offshore into a depth  
5           greater than 300 feet.

6           “(C) The facility’s discharge is in compli-  
7           ance with all local and State water quality  
8           standards for the receiving waters.

9           “(D) The facility’s discharge will be sub-  
10          ject to an ocean monitoring program acceptable  
11          to relevant Federal and State regulatory agen-  
12          cies.”.

13          (b) MODIFICATION OF SECONDARY TREATMENT RE-  
14          QUIREMENTS.—

15                 (1) IN GENERAL.—Section 301 (33 U.S.C.  
16          1311) is amended by adding at the end the follow-  
17          ing:

18          “(s) MODIFICATION OF SECONDARY TREATMENT RE-  
19          QUIREMENTS.—

20                 “(1) IN GENERAL.—The Administrator, with  
21          the concurrence of the State, shall issue a 10-year  
22          permit under section 402 which modifies the require-  
23          ments of subsection (b)(1)(B) of this section with re-  
24          spect to the discharge of any pollutant from a pub-  
25          licly owned treatment works into marine waters

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

4 “(A) there is an applicable ocean plan and  
5 the facility’s discharge is in compliance with all  
6 local and State water quality standards for the  
7 receiving waters;

8 “(B) the facility’s discharge will be subject  
9 to an ocean monitoring program determined to  
10 be acceptable by relevant Federal and State  
11 regulatory agencies;

12 “(C) the applicant has an Agency approved  
13 pretreatment plan in place; and

14 “(D) the applicant, at the time such modi-  
15 fication becomes effective, will be discharging  
16 effluent which has received at least chemically  
17 enhanced primary treatment and achieves a  
18 monthly average of 75 percent removal of sus-  
19 pended solids.

20 “(2) DISCHARGE OF ANY POLLUTANT INTO MA-  
21 RINE WATERS DEFINED.—For purposes of this sub-  
22 section, the term ‘discharge of any pollutant into  
23 marine waters’ means a discharge into deep waters  
24 of the territorial sea or the waters of the contiguous

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

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

10 “(4) EFFECT OF FAILURE TO RESPOND.—If the  
11 Administrator does not respond to an application for  
12 a modification under paragraph (1) on or before the  
13 90th day referred to in paragraph (3), the applica-  
14 tion shall be deemed approved and the modification  
15 sought by the applicant shall be in effect for the suc-  
16 ceeding 10-year period.”.

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

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

1 (c) MODIFICATIONS FOR SMALL SYSTEM TREAT-  
2 MENT TECHNOLOGIES.—Section 301 (33 U.S.C. 1311) is  
3 amended by adding at the end the following:

4 “(t) MODIFICATIONS FOR SMALL SYSTEM TREAT-  
5 MENT TECHNOLOGIES.—The Administrator, with the con-  
6 currence of the State, or a State with an approved pro-  
7 gram under section 402 may issue a permit under section  
8 402 which modifies the requirements of subsection  
9 (b)(1)(B) of this section with respect to the discharge of  
10 any pollutant from a publicly owned treatment works serv-  
11 ing a community of 10,000 people or fewer if the applicant  
12 demonstrates to the satisfaction of the Administrator  
13 that—

14 “(1) the effluent from such facility originates  
15 primarily from domestic users; and

16 “(2) such facility utilizes a properly constructed  
17 and operated alternative wastewater treatment sys-  
18 tem (including recirculating sand filter systems, con-  
19 structed wetlands, and oxidation lagoons) which is  
20 equivalent to secondary treatment or will provide in  
21 the receiving waters and watershed an adequate level  
22 of protection to human health and the environment  
23 and contribute to the attainment of water quality  
24 standards.”.

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

3 “(u) PUERTO RICO.—

4 “(1) STUDY BY GOVERNMENT OF PUERTO  
5 RICO.—Not later than 3 months after the date of  
6 the enactment of this section, the Government of  
7 Puerto Rico may, after consultation with the Admin-  
8 istrator, initiate a study of the marine environment  
9 of Anasco Bay off the coast of the Mayaguez region  
10 of Puerto Rico to determine the feasibility of con-  
11 structing a deepwater outfall for the publicly owned  
12 treatment works located at Mayaguez, Puerto Rico.  
13 Such study shall recommend one or more technically  
14 feasible locations for the deepwater outfall based on  
15 the effects of such outfall on the marine environ-  
16 ment.

17 “(2) APPLICATION FOR MODIFICATION.—Not-  
18 withstanding subsection (j)(1)(A), not later than 18  
19 months after the date of the enactment of this sec-  
20 tion, an application may be submitted for a modi-  
21 fication pursuant to subsection (h) of the require-  
22 ments of subsection (b)(1)(B) of this section by the  
23 owner of the publicly owned treatment works at Ma-  
24 yaguez, Puerto Rico, for a deepwater outfall at a lo-

1 cation recommended in the study conducted pursu-  
2 ant to paragraph (1).

3 “(3) INITIAL DETERMINATION.—On or before  
4 the 90th day after the date of submittal of an appli-  
5 cation for modification under paragraph (2), the Ad-  
6 ministrator shall issue to the applicant a draft initial  
7 determination regarding the modification of the ex-  
8 isting permit.

9 “(4) FINAL DETERMINATION.—On or before  
10 the 270th day after the date of submittal of an ap-  
11 plication for modification under paragraph (2), the  
12 Administrator shall issue a final determination re-  
13 garding such modification.

14 “(5) EFFECTIVENESS.—If a modification is  
15 granted pursuant to an application submitted under  
16 this subsection, such modification shall be effective  
17 only if the new deepwater outfall is operational with-  
18 in 5 years after the date of the enactment of this  
19 subsection. In all other aspects, such modification  
20 shall be effective for the period applicable to all  
21 modifications granted under subsection (h).

22 (e) ANCHORAGE, ALASKA.—Section 301 (33 U.S.C.  
23 1311) is further amended by adding at the end the follow-  
24 ing:



1       “(v) ANCHORAGE, ALASKA.—The Administrator may  
2 grant an application for a modification pursuant to sub-  
3 section (h) with respect to the discharge into marine wa-  
4 ters of any pollutant from a publicly owned treatment  
5 works serving Anchorage, Alaska, notwithstanding sub-  
6 section (j)(1)(A) and notwithstanding whether or not the  
7 treatment provided by such treatment works is adequate  
8 to remove at least 30 percent of the biological oxygen de-  
9 manding material.”.

10 **SEC. 310. TOXIC POLLUTANTS.**

11       (a) TOXIC EFFLUENT LIMITATIONS AND STAND-  
12 ARDS.—Section 307(a)(2) (33 U.S.C. 1317(a)(2)) is  
13 amended—

14           (1) by striking “(2) Each” and inserting the  
15 following:

16           “(2) TOXIC EFFLUENT LIMITATIONS AND  
17 STANDARDS.—

18                   “(A) IN GENERAL.—Each”;

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

21           (3) by indenting subparagraph (A), as so des-  
22 igned, and moving the remaining text of such sub-  
23 paragraph 2 ems further to the right; and

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

1 (5) by adding at the end the following:

2 “(B) FACTORS.—The published effluent  
3 standard (or prohibition) shall take into ac-  
4 count—

5 “(i) the pollutant’s persistence, tox-  
6 icity, degradability, and bioaccumulation  
7 potential;

8 “(ii) the magnitude and risk of expo-  
9 sure to the pollutant, including risks to af-  
10 fected organisms and the importance of  
11 such organisms;

12 “(iii) the relative contribution of point  
13 source discharges of the pollutant to the  
14 overall risk from the pollutant;

15 “(iv) the availability of, costs associ-  
16 ated with, and risk posed by substitute  
17 chemicals or processes or the availability of  
18 treatment processes or control technology;

19 “(v) the beneficial and adverse social  
20 and economic effects of the effluent stand-  
21 ard, including the impact on energy re-  
22 sources;

23 “(vi) the extent to which effective con-  
24 trol is being or may be achieved in an ex-

1           peditious manner under other regulatory  
2           authorities;

3           “(vii) the impact on national security  
4           interests; and

5           “(viii) such other factors as the Ad-  
6           ministrator considers appropriate.”.

7           (b) BEACH WATER QUALITY MONITORING.—

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

10          “(o) BEACH WATER QUALITY MONITORING.—After  
11          consultation with appropriate Federal, State, and local  
12          agencies and after providing notice and opportunity for  
13          public comment, the Administrator shall develop and  
14          issue, not later than 18 months after the date of the enact-  
15          ment of this Act, guidance that States may use in monitor-  
16          ing water quality at beaches and issuing health advisories  
17          with respect to beaches, including testing protocols, rec-  
18          ommendations on frequency of testing and monitoring,  
19          recommendations on pollutants for which monitoring and  
20          testing should be conducted, and recommendations on  
21          when health advisories should be issued. Such guidance  
22          shall be based on the best available scientific information  
23          and be sufficient to protect public health and safety in  
24          the case of any reasonably expected exposure to pollutants  
25          as a result of swimming or bathing.”.

1           (2) REPORTS.—Section 516(a) (33 U.S.C.  
2           1375(a)) is amended by striking “and (9)” and in-  
3           serting “(9) the monitoring conducted by States on  
4           the water quality of beaches and the issuance of  
5           health advisories with respect to beaches, and (10)”.

6           (c) FISH CONSUMPTION ADVISORIES.—Any fish con-  
7           sumption advisories issued by the Administrator shall be  
8           based upon the protocols, methodology, and findings of the  
9           Food and Drug Administration.

10 **SEC. 311. LOCAL PRETREATMENT AUTHORITY.**

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

13           “(f) LOCAL PRETREATMENT AUTHORITY.—

14           “(1) DEMONSTRATION.—If, to carry out the  
15           purposes identified in paragraph (2), a publicly  
16           owned treatment works with an approved  
17           pretreatment program demonstrates to the satisfac-  
18           tion of the Administrator, or a State with an ap-  
19           proved program under section 402, that—

20           “(A) such publicly owned treatment works  
21           is in compliance, and is likely to remain in com-  
22           pliance, with its permit under section 402, in-  
23           cluding applicable effluent limitations and nar-  
24           rative standards;

1           “(B) such publicly owned treatment works  
2 is in compliance, and is likely to remain in com-  
3 pliance, with applicable air emission limitations;

4           “(C) biosolids produced by such publicly  
5 owned treatment works meet beneficial use re-  
6 quirements under section 405;

7           “(D) such publicly owned treatment works  
8 is likely to continue to meet all applicable State  
9 requirements; and

10           “(E) local limits established by such treat-  
11 ment works in its approved pretreatment pro-  
12 gram are preventing and will continue to pre-  
13 vent the introduction of pollutants into such  
14 treatment works that interfere with, pass  
15 through, or are otherwise incompatible with  
16 such treatment works;

17 the approved pretreatment program shall be modi-  
18 fied to allow the publicly owned treatment works to  
19 apply approved local limits in lieu of categorical  
20 pretreatment standards promulgated under this sec-  
21 tion.

22           “(2) PURPOSES.—The publicly owned treat-  
23 ment works may make the demonstration to the Ad-  
24 ministrator or the State, as the case may be, to  
25 apply approved local limits in lieu of categorical

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

3 “(A) reducing the administrative burden  
4 associated with the designation of an ‘industrial  
5 user’ as a ‘categorical industrial user’; or

6 “(B) eliminating additional redundant or  
7 unnecessary treatment by industrial users  
8 which has little or no environmental benefit.

9 “(3) LIMITATIONS.—

10 “(A) SIGNIFICANT NONCOMPLIANCE.—The  
11 publicly owned treatment works may not apply  
12 local limits in lieu of categorical pretreatment  
13 standards to any industrial user which is in sig-  
14 nificant noncompliance (as defined by the Ad-  
15 ministrator) with its approved pretreatment  
16 program.

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

22 “(4) ANNUAL REVIEW.—

23 “(A) DEMONSTRATION RELATING TO ABIL-  
24 ITY TO MEET CRITERIA.—As part of the annual  
25 pretreatment report of the publicly owned treat-

1           ment works to the Administrator or State, the  
2           treatment works shall demonstrate that applica-  
3           tion of local limits in lieu of categorical  
4           pretreatment standards has not resulted in the  
5           inability of the treatment works to meet the cri-  
6           teria of paragraph (1).

7           “(B) TERMINATION OF AUTHORITY.—If  
8           the Administrator or State determines that ap-  
9           plication of local limits in lieu of categorical  
10          pretreatment standards has resulted in the in-  
11          ability of the treatment works to meet the cri-  
12          teria of paragraph (1), the authority of a pub-  
13          licly owned treatment works under this section  
14          shall be terminated and any affected industrial  
15          user shall have a reasonable period of time to  
16          be determined by the Administrator or State,  
17          but not to exceed 2 years, to come into compli-  
18          ance with any otherwise applicable requirements  
19          of this Act.”.

20 **SEC. 312. COMPLIANCE WITH MANAGEMENT PRACTICES.**

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

23          “(g) COMPLIANCE WITH MANAGEMENT PRAC-  
24          TICES.—

1           “(1) SPECIAL RULE.—The Administrator or a  
2 State with a permit program approved under section  
3 402 may allow any person that introduces silver into  
4 a publicly owned treatment works to comply with a  
5 code of management practices with respect to the in-  
6 troduction of silver into the treatment works for a  
7 period not to exceed 5 years beginning on the date  
8 of the enactment of this subsection in lieu of comply-  
9 ing with any pretreatment requirement (including  
10 any local limit) based on an effluent limitation for  
11 the treatment works derived from a water quality  
12 standard for silver—

13                   “(A) if the treatment works has accepted  
14 the code of management practices;

15                   “(B) if the code of management practices  
16 meets the requirements of paragraph (2); and

17                   “(C) if the facility is—

18                           “(i) part of a class of facilities for  
19 which the code of management practices  
20 has been approved by the Administrator or  
21 the State;

22                           “(ii) in compliance with a mass limita-  
23 tion or concentration level for silver attain-  
24 able with the application of the best avail-  
25 able technology economically achievable for



1           such facilities, as established by the Ad-  
2           ministrator after a review of the treatment  
3           and management practices of such class of  
4           facilities; and

5                   “(iii) implementing the code of man-  
6                   agement practices.

7           “(2) CODE OF MANAGEMENT PRACTICES.—A  
8           code of management practices meets the require-  
9           ments of this paragraph if the code of management  
10          practices—

11                   “(A) is developed and adopted by rep-  
12                   resentatives of industry and publicly owned  
13                   treatment works of major urban areas;

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

16                   “(C) reflects acceptable industry practices  
17                   to minimize the amount of silver introduced  
18                   into publicly owned treatment works or other-  
19                   wise entering the environment from the class of  
20                   facilities for which the code of management  
21                   practices is approved; and

22                   “(D) addresses, at a minimum—

23                           “(i) the use of the best available tech-  
24                           nology economically achievable, based on a  
25                           review of the current state of such tech-

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

3 “(ii) water conservation measures  
4 available to reduce the total quantity of  
5 discharge from such facilities to publicly  
6 owned treatment works;

7 “(iii) opportunities to recover silver  
8 (and other pollutants) from the waste  
9 stream prior to introduction into a publicly  
10 owned treatment works; and

11 “(iv) operating and maintenance prac-  
12 tices to minimize the amount of silver in-  
13 troduced into publicly owned treatment  
14 works and to assure consistent perform-  
15 ance of the management practices and  
16 treatment technology specified under this  
17 paragraph.

18 “(3) INTERIM EXTENSION FOR POTWS RECEIV-  
19 ING SILVER.—In any case in which the Adminis-  
20 trator or a State with a permit program approved  
21 under section 402 allows under paragraph (1) a per-  
22 son to comply with a code of management practices  
23 for a period of not to exceed 5 years in lieu of com-  
24 plying with a pretreatment requirement (including a  
25 local limit) for silver, the Administrator or State, as

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

9 “(A) the quality of any affected waters and  
10 the operation of the treatment works will be  
11 adequately protected during such period by im-  
12 plementation of the code of management prac-  
13 tices and the use of best technology economi-  
14 cally achievable by persons introducing silver  
15 into the treatment works;

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

19 “(C) a program of enforcement by such  
20 treatment works and the State ensures such  
21 compliance.”.

22 **SEC. 313. FEDERAL ENFORCEMENT.**

23 (a) ADJUSTMENT OF PENALTIES.—Section 309 (33  
24 U.S.C. 1319) is amended by adding at the end the follow-  
25 ing:

1       “(h) ADJUSTMENT OF MONETARY PENALTIES FOR  
2 INFLATION.—

3           “(1) IN GENERAL.—Not later than 4 years  
4 after the date of the enactment of this subsection,  
5 and at least once every 4 years thereafter, the Ad-  
6 ministrator shall adjust each monetary penalty pro-  
7 vided by this section in accordance with paragraph  
8 (2) and publish such adjustment in the Federal Reg-  
9 ister.

10          “(2) METHOD.—An adjustment to be made  
11 pursuant to paragraph (1) shall be determined by  
12 increasing or decreasing the maximum monetary  
13 penalty or the range of maximum monetary pen-  
14 alties, as appropriate, by multiplying the cost-of-liv-  
15 ing adjustment and the amount of such penalty.

16          “(3) COST-OF-LIVING ADJUSTMENT DEFINED.—  
17 In this subsection, the term ‘cost-of-living’ adjust-  
18 ment means the percentage (if any) for each mone-  
19 tary penalty by which—

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

23           “(B) the Consumer Price Index for—

24           “(i) with respect to the first adjust-  
25 ment under this subsection, the month of

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

4 “(ii) with respect to each subsequent  
5 adjustment under this subsection, the  
6 month of June of the calendar year in  
7 which the amount of such monetary pen-  
8 alty was last adjusted under this sub-  
9 section.

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

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

17 (b) JOINING STATES AS PARTIES IN ACTIONS IN-  
18 VOLVING MUNICIPALITIES.—Section 309(e) (33 U.S.C.  
19 1319(e)) is amended by striking “shall be joined as a  
20 party. Such State” and inserting “may be joined as a  
21 party. Any State so joined as a party”.

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

3 (a) IN GENERAL.—The requirements of section  
4 311(j)(5) of the Federal Water Pollution Control Act (33  
5 U.S.C. 1321(j)(5)) shall not apply with respect to—

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

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

11 (b) REGULATIONS.—The President shall issue regu-  
12 lations clarifying the meaning of the term “de minimis  
13 quantity of oil or hazardous substances” as used in this  
14 section.

15 **SEC. 315. MARINE SANITATION DEVICES.**

16 Section 312(c)(1)(A) (33 U.S.C. 1322(c)(1)(A)) is  
17 amended by adding at the end the following: “Not later  
18 than 2 years after the date of the enactment of this sen-  
19 tence, and at least once every 5 years thereafter, the Ad-  
20 ministrator, in consultation with the Secretary of the De-  
21 partment in which the Coast Guard is operating and after  
22 providing notice and opportunity for public comment, shall  
23 review such standards and regulations to take into account  
24 improvements in technology relating to marine sanitation  
25 devices and based on such review shall make such revisions  
26 to such standards and regulations as may be necessary.”.

1 **SEC. 316. FEDERAL FACILITIES.**

2 (a) APPLICATION OF CERTAIN PROVISIONS.—Section  
3 313(a) (33 U.S.C. 1323(a)) is amended by striking all  
4 preceding subsection (b) and inserting the following:

5 **“SEC. 313. FEDERAL FACILITIES POLLUTION CONTROL.**

6 “(a) APPLICABILITY OF FEDERAL, STATE, INTER-  
7 STATE, AND LOCAL LAWS.—

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

11 “(A) having jurisdiction over any property  
12 or facility, or

13 “(B) engaged in any activity resulting, or  
14 which may result, in the discharge of pollut-  
15 ants,

16 and each officer, agent, or employee thereof in the  
17 performance of his official duties, shall be subject to,  
18 and comply with, all Federal, State, interstate, and  
19 local requirements, administrative authority, and  
20 process and sanctions respecting the control and  
21 abatement of water pollution in the same manner  
22 and to the same extent as any nongovernmental en-  
23 tity, including the payment of reasonable service  
24 charges.

25 “(2) TYPES OF ACTIONS COVERED.—Paragraph  
26 (1) shall apply—

1           “(A) to any requirement whether sub-  
2           stantive or procedural (including any record-  
3           keeping or reporting requirement, any require-  
4           ment respecting permits, and any other require-  
5           ment),

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

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

11          “(3) PENALTIES AND FINES.—The Federal,  
12          State, interstate, and local substantive and proce-  
13          dural requirements, administrative authority, and  
14          process and sanctions referred to in paragraph (1)  
15          include all administrative orders and all civil and ad-  
16          ministrative penalties and fines, regardless of wheth-  
17          er such penalties or fines are punitive or coercive in  
18          nature or are imposed for isolated, intermittent, or  
19          continuing violations.

20          “(4) SOVEREIGN IMMUNITY.—

21                 “(A) WAIVER.—The United States hereby  
22                 expressly waives any immunity otherwise appli-  
23                 cable to the United States with respect to any  
24                 requirement, administrative authority, and  
25                 process and sanctions referred to in paragraph



1 (1) (including any injunctive relief, any admin-  
2 istrative order, any civil or administrative pen-  
3 alty or fine referred to in paragraph (3), or any  
4 reasonable service charge).

5 “(B) PROCESSING FEES.—The reasonable  
6 service charges referred to in this paragraph in-  
7 clude fees or charges assessed in connection  
8 with the processing and issuance of permits, re-  
9 newal of permits, amendments to permits, re-  
10 view of plans, studies, and other documents,  
11 and inspection and monitoring of facilities, as  
12 well as any other nondiscriminatory charges  
13 that are assessed in connection with a Federal,  
14 State, interstate, or local water pollution regu-  
15 latory program.

16 “(5) EXEMPTIONS.—

17 “(A) GENERAL AUTHORITY OF PRESI-  
18 DENT.—The President may exempt any effluent  
19 source of any department, agency, or instru-  
20 mentality in the executive branch from compli-  
21 ance with any requirement to which paragraph  
22 (1) applies if the President determines it to be  
23 in the paramount interest of the United States  
24 to do so; except that no exemption may be

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

3 “(B) LIMITATION.—No exemptions shall  
4 be granted under subparagraph (A) due to lack  
5 of appropriation unless the President shall have  
6 specifically requested such appropriation as a  
7 part of the budgetary process and the Congress  
8 shall have failed to make available such re-  
9 quested appropriation.

10 “(C) TIME PERIOD.—Any exemption under  
11 subparagraph (A) shall be for a period not in  
12 excess of 1 year, but additional exemptions may  
13 be granted for periods of not to exceed 1 year  
14 upon the President’s making a new determina-  
15 tion.

16 “(D) MILITARY PROPERTY.—In addition to  
17 any exemption of a particular effluent source,  
18 the President may, if the President determines  
19 it to be in the paramount interest of the United  
20 States to do so, issue regulations exempting  
21 from compliance with the requirements of this  
22 section any weaponry, equipment, aircraft, ves-  
23 sels, vehicles, or other classes or categories of  
24 property, and access to such property, which  
25 are owned or operated by the Armed Forces of

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

6 “(E) REPORTS.—The President shall re-  
7 port each January to the Congress all exemp-  
8 tions from the requirements of this section  
9 granted during the preceding calendar year, to-  
10 gether with the President’s reason for granting  
11 such exemption.

12 “(6) VENUE.—Nothing in this section shall be  
13 construed to prevent any department, agency, or in-  
14 strumentality of the Federal Government, or any of-  
15 ficer, agent, or employee thereof in the performance  
16 of official duties, from removing to the appropriate  
17 Federal district court any proceeding to which the  
18 department, agency, or instrumentality or officer,  
19 agent, or employee thereof is subject pursuant to  
20 this section, and any such proceeding may be re-  
21 moved in accordance with chapter 89 of title 28,  
22 United States Code.

23 “(7) PERSONAL LIABILITY OF FEDERAL EM-  
24 PLOYEES.—No agent, employee, or officer of the  
25 United States shall be personally liable for any civil

1 penalty under any Federal, State, interstate, or local  
2 water pollution law with respect to any act or omis-  
3 sion within the scope of the official duties of the  
4 agent, employee, or officer.

5 “(8) CRIMINAL SANCTIONS.—An agent, em-  
6 ployee, or officer of the United States shall be sub-  
7 ject to any criminal sanction (including any fine or  
8 imprisonment) under any Federal or State water  
9 pollution law, but no department, agency, or instru-  
10 mentality of the executive, legislative, or judicial  
11 branch of the Federal Government shall be subject  
12 to any such sanction.”.

13 (b) FUNDS COLLECTED BY A STATE.—Section 313  
14 (33 U.S.C. 1323) is further amended by adding at the  
15 end the following:

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

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

3 “(d) FEDERAL FACILITY ENFORCEMENT.—

4 “(1) ADMINISTRATIVE ENFORCEMENT BY  
5 EPA.—The Administrator may commence an admin-  
6 istrative enforcement action against any department,  
7 agency, or instrumentality of the executive, legisla-  
8 tive, or judicial branch of the Federal Government  
9 pursuant to the enforcement authorities contained in  
10 this Act.

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

20 “(3) VOLUNTARY SETTLEMENT.—Any vol-  
21 untary resolution or settlement of an action under  
22 this subsection shall be set forth in an administra-  
23 tive consent order.

24 “(4) CONFERRAL WITH EPA.—No administra-  
25 tive order issued to a department, agency, or instru-

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

4       (d) LIMITATION ON ACTIONS AND RIGHT OF INTER-  
5       VENTION.—Section 313 is further amended by adding at  
6       the end the following:

7       “(e) LIMITATION ON ACTIONS AND RIGHT OF INTER-  
8       VENTION.—Any violation with respect to which the Ad-  
9       ministrator has commenced and is diligently prosecuting  
10      an action under this subsection, or for which the Adminis-  
11      trator has issued a final order and the violator has either  
12      paid a penalty or fine assessed under this subsection or  
13      is subject to an enforceable schedule of corrective actions,  
14      shall not be the subject of an action under section 505  
15      of this Act. In any action under this subsection, any citi-  
16      zen may intervene as a matter of right.”.

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

21      (f) DEFINITION OF RADIOACTIVE MATERIALS.—Sec-  
22      tion 502 (33 U.S.C. 1362) is amended by adding at the  
23      end the following:

24      “(24) The term ‘radioactive materials’ includes  
25      source materials, special nuclear materials, and byproduct

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

8 (g) CONFORMING AMENDMENTS.—Section 313(b)  
9 (33 U.S.C. 1323(b)) is amended—

10 (1) by striking “(b)(1)” and inserting the fol-  
11 lowing:

12 “(b) WASTEWATER FACILITIES.—

13 “(1) COOPERATION FOR USE OF WASTEWATER  
14 CONTROL SYSTEMS.—”;

15 (2) in paragraph (2) by inserting “LIMITATION  
16 ON CONSTRUCTION.—” before “Construction”; and

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

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

23 **SEC. 317. CLEAN LAKES.**

24 (a) PRIORITY LAKES.—Section 314(d)(2) (33 U.S.C.  
25 1324(d)(2)) is amended by inserting “Paris Twin Lakes,

1 Illinois; Otsego Lake, New York; Raystown Lake, Penn-  
2 sylvania;” after “Minnesota;”.

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

5 “(e) AUTHORIZATION OF APPROPRIATIONS.—There  
6 is authorized to be appropriated to carry out this section  
7 \$10,000,000 per fiscal year for each of fiscal years 1996  
8 through 2000.”.

9 **SEC. 318. COOLING WATER INTAKE STRUCTURES.**

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

11 (1) by inserting after “(b)” the following:

12 “REGULATION OF COOLING WATER INTAKE STRUC-  
13 TURES.—”;

14 (2) by inserting before “Any” the following:

15 “(1) IN GENERAL.—”;

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

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

20 “(2) INTAKE STRUCTURE CONSIDERATIONS.—

21 “(A) IN GENERAL.—The Administrator  
22 shall require the application of the best tech-  
23 nology available to new and existing cooling  
24 water intake structures in instances where the  
25 Administrator has determined that such a



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

3 “(B) NEW INTAKE STRUCTURE.—In iden-  
4 tifying the best technology available for any new  
5 cooling water intake structure pursuant to sub-  
6 paragraph (A), the Administrator shall con-  
7 sider, at a minimum, the following:

8 “(i) The relative technological, engi-  
9 neering, and economic feasibility of avail-  
10 able intake structure technologies for mini-  
11 mizing adverse impacts to the aquatic envi-  
12 ronment.

13 “(ii) The relative technological, engi-  
14 neering, and economic feasibility of avail-  
15 able alternatives as to the location, design,  
16 construction, and capacity of the intake  
17 structure.

18 “(iii) The relative environmental, so-  
19 cial, and economic costs and benefits of  
20 available technologies and alternatives  
21 identified pursuant to this subparagraph or  
22 subparagraph (D).

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

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

6           “(i) The relative technological, engi-  
7 neering, and economic feasibility of reason-  
8 ably available intake structure retrofit  
9 technologies for minimizing adverse im-  
10 pacts to the aquatic environment.

11           “(ii) The relative environmental, so-  
12 cial, and economic costs and benefits of  
13 available technologies and alternatives  
14 identified pursuant to this subparagraph or  
15 subparagraph (D).

16           “(iii) The projected remaining useful  
17 life of the point source at which the exist-  
18 ing cooling water intake structure is lo-  
19 cated.

20           “(D) CONSIDERATION OF ALTER-  
21 NATIVES.—In identifying the best technology  
22 available for any new or existing cooling water  
23 intake structure, the Administrator shall con-  
24 sider environmental enhancements or any other  
25 technique that the owner or operator has identi-

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

3           “(3) DEFINITIONS.—In this subsection, the fol-  
4           lowing definitions apply:

5                   “(A) NEW COOLING WATER INTAKE  
6           STRUCTURE.—The term ‘new cooling water in-  
7           take structure’ means any intake structure the  
8           construction of which commences after the pub-  
9           lication of final regulations implementing this  
10          subsection.

11                   “(B) EXISTING COOLING WATER INTAKE  
12          STRUCTURE.—The term ‘existing cooling water  
13          intake structure’ means any intake structure  
14          that is not a new cooling water intake struc-  
15          ture.”.

16 **SEC. 319. NONPOINT SOURCE MANAGEMENT PROGRAMS.**

17          (a) STATE ASSESSMENT REPORT.—

18                  (1) CONTENTS.—Section 319(a)(1)(C) (33  
19          U.S.C. 1329(a)(1)(C)) is amended by striking “best  
20          management practices and”.

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

23                          (A) by inserting “, reviewing, and revising”  
24                          after “developing”; and

1 (B) by striking “section” the first place it  
2 appears and inserting “subsection”.

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

5 “(3) REVIEW AND REVISION.—Not later than  
6 18 months after the date of the enactment of the  
7 Clean Water Amendments of 1995, and every 5  
8 years thereafter, the State shall review, revise, and  
9 submit to the Administrator the report required by  
10 this subsection.”.

11 (b) STATE MANAGEMENT PROGRAM.—

12 (1) TERM OF PROGRAM.—Section 319(b)(1) is  
13 amended by striking “four” and inserting “5”.

14 (2) CONTENTS.—Section 319(b)(2) is amend-  
15 ed—

16 (A) in subparagraph (A)—

17 (i) by striking “best”;

18 (ii) by striking “paragraph (1)(B)”  
19 and inserting “subsection (a)(1)(B)”; and

20 (iii) by inserting “and measure” after  
21 “practice”;

22 (B) in subparagraph (B)—

23 (i) by striking “nonregulatory or regu-  
24 latory programs for enforcement,” and in-  
25 serting “one or more of the following: vol-

1           untary programs, incentive-based pro-  
2           grams, regulatory programs, enforceable  
3           policies and mechanisms, State manage-  
4           ment programs approved under section  
5           306 of the Coastal Zone Management Act  
6           of 1972,”; and

7           (ii) by striking “achieve implementa-  
8           tion” and all that follows before the period  
9           and inserting “manage categories,  
10          subcategories, or particular nonpoint  
11          sources to the degree necessary to provide  
12          for reasonable further progress toward the  
13          goal of attaining water quality standards  
14          within 15 years of approval of the State  
15          program for those waters identified under  
16          subsection (a)(1)(A)”;

17          (C) by striking subparagraph (C) and in-  
18          serting the following:

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

1 control practices and measures, and adoption of  
2 enforceable policies and mechanisms.”;

3 (D) in subparagraph (D) by striking “A  
4 certification of” and inserting “After the date  
5 of the enactment of the Clean Water Amend-  
6 ments of 1995, a certification by”;

7 (E) by adding at the end the following:

8 “(G) A description of the monitoring or  
9 other assessment which will be carried out  
10 under the program for the purposes of monitor-  
11 ing and assessing the effectiveness of the pro-  
12 gram, including the attainment of interim goals  
13 and milestones.

14 “(H) An identification of activities on Fed-  
15 eral lands in the State that are inconsistent  
16 with the State management program.

17 “(I) An identification of goals and mile-  
18 stones for progress in attaining water quality  
19 standards, including a projected date for attain-  
20 ing such standards as expeditiously as prac-  
21 ticable but not later than 15 years after the  
22 date of approval of the State program for each  
23 of the waters listed pursuant to subsection  
24 (a).”.

1           (3) UTILIZATION OF LOCAL AND PRIVATE EX-  
2           PERTS.—Section 319(b)(3) is amended by inserting  
3           before the period at the end the following: “, includ-  
4           ing academic institutions, private industry experts,  
5           and other individual experts in water resource con-  
6           servation and planning”.

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

10           “(5) RECOGNITION OF NEW TECHNOLOGIES.—  
11           In developing and implementing a management pro-  
12           gram under this subsection, a State may recognize  
13           and utilize new practices, technologies, processes,  
14           products, and other alternatives.

15           “(6) EFFICIENT AND EFFECTIVE USE OF RE-  
16           SOURCE.—In developing and implementing a man-  
17           agement program under this subsection, a State may  
18           recognize and provide for a methodology which takes  
19           into account situations in which management meas-  
20           ures used to control one pollutant have an adverse  
21           impact with respect to another pollutant. The meth-  
22           odology should encourage the balanced combination  
23           of measures which best address the various impair-  
24           ments on the watershed or site.

1           “(7) RECOGNITION OF AGRICULTURAL PRO-  
2           GRAMS.—Any agricultural producer who has volun-  
3           tarily developed and is implementing an approved  
4           whole farm or ranch natural resources management  
5           plan shall be considered to be in compliance with the  
6           requirements of a State program developed under  
7           this section—

8                   “(A) if such plan has been developed under  
9                   a program subject to a memorandum of agree-  
10                  ment between the Chief of the Natural Re-  
11                  sources Conservation Service and the Governor,  
12                  or their respective designees; and

13                  “(B) if such memorandum of agreement  
14                  specifies—

15                          “(i) the scope and content of the Nat-  
16                          ural Resources Conservation Service pro-  
17                          gram (not an individual farm or ranch  
18                          plan) in the State or regions of the State;

19                          “(ii) the terms of approval, implemen-  
20                          tation, and duration of a voluntary farm or  
21                          ranch plan for agricultural producers;

22                          “(iii) the responsibilities for assessing  
23                          implementation of voluntary whole farm  
24                          and ranch natural resource management  
25                          plans; and



1                   “(iv) the duration of such memoran-  
2                   dum of agreement.

3           At a minimum, such memorandum of agreement  
4           shall be reviewed and may be revised every 5 years,  
5           as part of the State review of its management pro-  
6           gram under this section.”.

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

10                   “(2) TIME PERIOD FOR SUBMISSION OF MAN-  
11                   AGEMENT PROGRAMS.—Each management program  
12                   shall be submitted to the Administrator within 30  
13                   months of the issuance by the Administrator of the  
14                   final guidance under subsection (o) and every 5  
15                   years thereafter. Each program submission after the  
16                   initial submission following the date of the enact-  
17                   ment of the Clean Water Amendments of 1995 shall  
18                   include a demonstration of reasonable further  
19                   progress toward the goal of attaining water quality  
20                   standards within 15 years of approval of the State  
21                   program, including documentation of the degree to  
22                   which the State has achieved the interim goals and  
23                   milestones contained in the previous program sub-  
24                   mission. Such demonstration shall take into account

1 the adequacy of Federal funding under this sec-  
2 tion.”.

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

5 (1) DEADLINE.—Section 319(d)(1) is amended  
6 by inserting “or revised report” after “any report”.

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

9 (A) in subparagraph (B) by inserting be-  
10 fore the semicolon the following: “; except that  
11 such program or portion shall not be dis-  
12 approved solely because the program or portion  
13 does not include enforceable policies or mecha-  
14 nisms”;

15 (B) in subparagraph (D) by striking “are  
16 not adequate” and all that follows before the  
17 semicolon and inserting the following: “will not  
18 result in reasonable further progress toward the  
19 attainment of applicable water quality stand-  
20 ards under section 303 as expeditiously as pos-  
21 sible but not later than 15 years after approval  
22 of the State program”; and

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

1 (i) by striking “3 months” and insert-  
2 ing “6 months”; and

3 (ii) by inserting “or portion thereof”  
4 before “within three months of receipt”.

5 (3) FAILURE TO SUBMIT REPORT.—Section  
6 319(d)(3) is amended—

7 (A) by striking “the report” and inserting  
8 “a report or revised report”;

9 (B) by striking “30 months” and inserting  
10 “18 months”; and

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

14 (4) PROGRAM MANAGEMENT BY THE ADMINIS-  
15 TRATOR.—Section 319(d) is amended by adding at  
16 the end the following:

17 “(4) FAILURE OF STATE TO SUBMIT PRO-  
18 GRAM.—

19 “(A) PROGRAM MANAGEMENT BY THE AD-  
20 MINISTRATOR.—If a State fails to submit a  
21 management program or revised management  
22 program under subsection (b) or the Adminis-  
23 trator disapproves such management program,  
24 the Administrator shall prepare and implement  
25 a management program for controlling pollution

1 added from nonpoint sources to the navigable  
2 waters within the State and improving the qual-  
3 ity of such waters in accordance with subsection  
4 (b).

5 “(B) NOTICE AND HEARING.—If the Ad-  
6 ministrator intends to disapprove a program  
7 submitted by a State, the Administrator shall  
8 first notify the Governor of the State in writing  
9 of the modifications necessary to meet the re-  
10 quirements of this section. The Administrator  
11 shall provide adequate public notice and an op-  
12 portunity for a public hearing for all interested  
13 parties.

14 “(C) STATE REVISION OF ITS PROGRAM.—  
15 If, after taking into account the level of funding  
16 actually provided as compared with the level au-  
17 thorized under subsection (j), the Administrator  
18 determines that a State has failed to dem-  
19 onstrate reasonable further progress toward the  
20 attainment of water quality standards as re-  
21 quired, the State shall revise its program within  
22 12 months of that determination in a manner  
23 sufficient to achieve attainment of applicable  
24 water quality standards by the deadline estab-  
25 lished by this Act. If a State fails to make such

1 a program revision or the Administrator dis-  
2 approves such a revision, the Administrator  
3 shall prepare and implement a nonpoint source  
4 management program for the State.”.

5 (e) TECHNICAL ASSISTANCE.—Section 319(f) is  
6 amended by inserting “and implementing” after “develop-  
7 ing”.

8 (f) GRANT PROGRAM.—

9 (1) IN GENERAL.—Section 319(h)(1) is amend-  
10 ed—

11 (A) by amending the paragraph heading to  
12 read as follows: “GRANTS FOR PREPARATION  
13 AND IMPLEMENTATION OF REPORTS AND MAN-  
14 AGEMENT PROGRAMS.—”;

15 (B) by striking “for which a report submit-  
16 ted under subsection (a) and a management  
17 program submitted under subsection (b) is ap-  
18 proved under this section”;

19 (C) by striking “the Administrator shall  
20 make grants” and inserting “the Administrator  
21 may make grants under this subsection”;

22 (D) by striking “under this subsection to  
23 such State” and inserting “to such State”;

24 (E) by striking “implementing such man-  
25 agement program” and inserting “preparing a

1 report under subsection (a) and in preparing  
2 and implementing a management program  
3 under subsection (b)”;

4 (F) by inserting after the first sentence the  
5 following: “Grants for implementation of such  
6 management program may be made only after  
7 such report and management program are ap-  
8 proved under this section.”; and

9 (G) by adding at the end the following:  
10 “The Administrator is authorized to provide  
11 funds to a State if necessary to implement an  
12 approved portion of a State program or, with  
13 the approval of the Governor of the State, to  
14 implement a component of a federally estab-  
15 lished program. The Administrator may con-  
16 tinue to make grants to any State with an pro-  
17 gram approved on the day before the date of  
18 the enactment of the Clean Water Amendments  
19 of 1995 until the Administrator withdraws the  
20 approval of such program or the State fails to  
21 submit a revision of such program in accord-  
22 ance with subsection (c)(2).”.

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

1 (A) by striking “management program im-  
2 plemented” and inserting “report prepared and  
3 management program prepared and imple-  
4 mented”;

5 (B) by striking “60 percent” and inserting  
6 “75 percent”;

7 (C) by striking “implementing such man-  
8 agement program” and inserting “preparing  
9 such report and preparing and implementing  
10 such management program”; and

11 (D) by inserting “of program implementa-  
12 tion” after “non-Federal share”.

13 (3) LIMITATION ON GRANT AMOUNTS.—Section  
14 319(h)(4) is amended—

15 (A) by inserting before the first sentence  
16 the following: “The Administrator shall estab-  
17 lish, after consulting with the States, maximum  
18 and minimum grants for any fiscal year to pro-  
19 mote equity between States and effective  
20 nonpoint source management.”; and

21 (B) by adding at the end the following:  
22 “The minimum percentage of funds allocated to  
23 each State shall be 0.5 percent of the amount  
24 appropriated.”.

1           (4) ALLOCATION OF GRANT FUNDS.—Para-  
2           graph (5) of section 319(h) is amended to read as  
3           follows:

4           “(5) ALLOCATION OF GRANT FUNDS.—Grants  
5           under this section shall be allocated to States with  
6           approved programs in a fair and equitable manner  
7           and be based upon rules and regulations promul-  
8           gated by the Administrator which shall take into ac-  
9           count the extent and nature of the nonpoint sources  
10          of pollution in each State and other relevant fac-  
11          tors.”.

12          (5) USE OF FUNDS.—Paragraph (7) of section  
13          319(h) is amended to read as follows:

14          “(7) USE OF FUNDS.—A State may use grants  
15          made available to the State pursuant to this section  
16          for activities relating to nonpoint source water pollu-  
17          tion control, including—

18                  “(A) providing financial assistance with re-  
19                  spect to those activities whose principal purpose  
20                  is protecting and improving water quality;

21                  “(B) assistance related to the cost of pre-  
22                  paring or implementing the State management  
23                  program;

24                  “(C) providing incentive grants to individ-  
25                  uals to implement a site-specific water quality



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

3 “(D) land acquisition or conservation ease-  
4 ments consistent with a site-specific water qual-  
5 ity plan;

6 “(E) providing financial assistance with re-  
7 spect to those water pollution control activities  
8 which have as their principal purpose the pro-  
9 tection of public water supplies; and

10 “(F) restoring and maintaining the chemi-  
11 cal, physical, and biological integrity of urban  
12 and rural waters and watersheds (including res-  
13 toration and maintenance of water quality, a  
14 balanced indigenous population of shellfish,  
15 fish, and wildlife, aquatic and riparian vegeta-  
16 tion, and recreational activities in and on the  
17 water) and protecting designated uses, includ-  
18 ing fishing, swimming, and drinking water sup-  
19 ply.”.

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

23 “(8) COMPLIANCE WITH STATE MANAGEMENT  
24 PROGRAM.—In any fiscal year for which the Admin-  
25 istrator determines that a State has not made satis-

1 factory progress in the preceding fiscal year in meet-  
2 ing the schedule specified for such State under sub-  
3 section (b)(2)(C), the Administrator is authorized to  
4 withhold grants pursuant to this section in whole or  
5 in part to the State after adequate written notice is  
6 provided to the Governor of the State.”.

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

9 “(13) ALLOTMENT STUDY.—

10 “(A) STUDY.—The Administrator, in con-  
11 sultation with the States, shall conduct a study  
12 of whether the allocation of funds under para-  
13 graph (5) appropriately reflects the needs and  
14 costs of nonpoint source control measures for  
15 different nonpoint source categories and  
16 subcategories and of options for better reflect-  
17 ing such needs and costs in the allotment of  
18 funds.

19 “(B) REPORT.—Not later than 5 years  
20 after the date of the enactment of the Clean  
21 Water Amendments of 1995, the Administrator  
22 shall transmit to Congress a report on the re-  
23 sults of the study conducted under this sub-  
24 section, together with recommendations.”.

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

4 (h) AUTHORIZATION OF APPROPRIATIONS.—Section  
5 319(j) is amended—

6 (1) by striking “and” before “\$130,000,000”;

7 (2) by inserting after “1991” the following: “,  
8 such sums as may be necessary for fiscal years 1992  
9 through 1995, \$100,000,000 for fiscal year 1996,  
10 \$150,000,000 for fiscal year 1997, \$200,000,000 for  
11 fiscal year 1998, \$250,000,000 for fiscal year 1999,  
12 and \$300,000,000 for fiscal year 2000”; and

13 (3) by striking “\$7,500,000” and inserting  
14 “\$25,000,000”.

15 (i) CONSISTENCY OF OTHER PROGRAMS AND  
16 PROJECTS WITH MANAGEMENT PROGRAMS.—Section  
17 319(k) (33 U.S.C. 1329(k)) is amended—

18 (1) by striking “allow States to review” and in-  
19 serting “require coordination with States in”;

20 (2) by inserting before the period at the end the  
21 following: “and the State watershed management  
22 program”; and

23 (3) by adding at the end the following: “Fed-  
24 eral agencies that own or manage land, or issue li-  
25 censes for activities that cause nonpoint source pol-

1 lution from such land, shall coordinate their  
2 nonpoint source control measures with the State  
3 nonpoint source management program and the State  
4 watershed management program. A Federal agency  
5 and the Governor of an affected State shall enter  
6 into a memorandum of understanding to carry out  
7 the purposes of this paragraph. Such a memoran-  
8 dum of understanding shall not relieve the Federal  
9 agency of the agency's obligation to comply with its  
10 own mandates.”.

11 (j) REPORTS OF THE ADMINISTRATOR.—

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

14 (A) in the paragraph heading by striking  
15 “ANNUAL” and inserting “BIENNIAL”; and

16 (B) by striking “1988, and each January  
17 1” and inserting “1995, and biennially”.

18 (2) CONTENTS.—Section 319(m)(2) is amend-  
19 ed—

20 (A) by striking the paragraph heading and  
21 all that follows before “at a minimum” and in-  
22 serting “CONTENTS.—Each report submitted  
23 under paragraph (1),”;

1 (B) in subparagraph (A) by striking “best  
2 management practices” and inserting “meas-  
3 ures”; and

4 (C) in subparagraph (B) by striking “best  
5 management practices” and inserting “the  
6 measures provided by States under subsection  
7 (b)”.

8 (k) SET ASIDE FOR ADMINISTRATIVE PERSONNEL.—  
9 Section 319(n) is amended by striking “less” and insert-  
10 ing “more”.

11 (l) GUIDANCE ON MODEL MANAGEMENT PRACTICES  
12 AND MEASURES.—Section 319 is further amended by add-  
13 ing at the end the following:

14 “(o) GUIDANCE ON MODEL MANAGEMENT PRAC-  
15 TICES AND MEASURES.—

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

22 “(2) CONSULTATION; PUBLIC NOTICE AND COM-  
23 MENT.—The Administrator shall develop the model  
24 management practices and measures under para-  
25 graph (1) in consultation with the National Oceanic

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

7 “(3) PUBLICATION.—The Administrator shall  
8 publish proposed guidance under this subsection not  
9 later than 6 months after the date of the enactment  
10 of this subsection and shall publish final guidance  
11 under this subsection not later than 18 months after  
12 such date of enactment. The Administrator shall pe-  
13 riodically review and revise the final guidance at  
14 least once every 3 years after its publication.

15 “(4) MODEL MANAGEMENT PRACTICES AND  
16 MEASURES DEFINED.—For the purposes of this sub-  
17 section, the term ‘model management practices and  
18 measures’ means economically achievable measures  
19 for the control of the addition of pollutants from  
20 nonpoint sources of pollution which reflect the great-  
21 est degree of pollutant reduction achievable through  
22 the application of the best available nonpoint pollu-  
23 tion control practices, technologies, processes, siting  
24 criteria, operating methods, or other alternatives.  
25 The Administrator may distinguish among classes,

1 types, and sizes within any category of nonpoint  
2 sources.”.

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

5 “(p) INADEQUATE FUNDING.—For each fiscal year  
6 beginning after the date of the enactment of this sub-  
7 section for which the total of amounts appropriated to  
8 carry out this section are less than the total of amounts  
9 authorized to be appropriated pursuant to subsection (h),  
10 the deadline for compliance with any requirement of this  
11 section, including any deadline relating to assessment re-  
12 ports or State program implementation or monitoring ef-  
13 forts, shall be postponed by 1 year, unless the Adminis-  
14 trator and the State jointly certify that the amounts ap-  
15 propriated are sufficient to meet the requirements of this  
16 section.”.

17 (n) COASTAL ZONE MANAGEMENT.—Section 6217 of  
18 the Coastal Zone Act Reauthorization Amendments of  
19 1990 (16 U.S.C. 1451 note) is amended—

20 (1) in subsection (a)(1)—

21 (A) by inserting “(A)” after “PROGRAM  
22 DEVELOPMENT.—”; and

23 (B) by adding at the end the following:

24 “(B) A State that has not received Federal ap-  
25 proval for the State’s core coastal management pro-

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

10       (2) in subsection (b), in the matter preceding  
11       paragraph (1), by striking “to protect coastal waters  
12       generally” and inserting “to restore and protect  
13       coastal waters where the State has determined that  
14       coastal waters are threatened or significantly de-  
15       graded”;

16       (3) in subsection (b)(3)—

17               (A) by striking “The implementation” and  
18               inserting “A schedule for the implementation”;  
19               and

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

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



1           “(8) IDENTIFICATION OF PRIORITY AREAS.—A  
2           prioritization of the areas in the State in which  
3           management measures will be implemented.”;

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

6           “(5) CONDITIONAL APPROVAL.—The Secretary  
7           and Administrator may grant conditional approval to  
8           a State’s program where the State requests addi-  
9           tional time to complete the development of its pro-  
10          gram. During the period during which the State’s  
11          program is subject to conditional approval, the pen-  
12          alty provisions of paragraphs (3) and (4) shall not  
13          apply.”;

14          (6) in subsection (h)(1) by striking “, 1993,  
15          and 1994” and inserting “through 2000”; and

16          (7) in subsection (h)(2)(B)(iv) by striking “fis-  
17          cal year 1995” and inserting “each of fiscal years  
18          1995 through 2000”.

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

21          “(q) AGRICULTURAL INPUTS.—For the purposes of  
22          this Act, any land application of agricultural inputs, in-  
23          cluding livestock manure, shall not be considered a point  
24          source and shall be subject to enforcement only under this  
25          section.”.

1 (p) PURPOSE.—Section 319 (33 U.S.C. 1329) is fur-  
2 ther amended by adding at the end the following:

3 “(r) PURPOSE.—The purpose of this section is to as-  
4 sist States in addressing nonpoint sources of pollution  
5 where necessary to achieve the goals and requirements of  
6 this Act. It is recognized that State nonpoint source pro-  
7 grams need to be built upon a foundation that voluntary  
8 initiatives represent the approach most likely to succeed  
9 in achieving the objectives of this Act.”.

10 (q) CONTROL OF SALT WATER INTRUSION.—Section  
11 319 is further amended by adding at the end the following:

12 “(s) CONTROL OF SALT WATER INTRUSION.—Noth-  
13 ing in this section authorizes the Administrator to require  
14 a State to identify or establish procedures and methods  
15 to control salt water intrusion beyond what is provided for  
16 in section 208(b)(2)(I).”.

17 **SEC. 320. NATIONAL ESTUARY PROGRAM.**

18 (a) TECHNICAL AMENDMENT.—Section 320(a)(2)(B)  
19 (33 U.S.C. 1330(a)(2)(B)) is amended to read as follows:

20 “(B) PRIORITY CONSIDERATION.—The Ad-  
21 ministrator shall give priority consideration  
22 under this section to Long Island Sound, New  
23 York and Connecticut; Narragansett Bay,  
24 Rhode Island; Buzzards Bay, Massachusetts;  
25 Massachusetts Bay, Massachusetts (including

1 Cape Cod Bay and Boston Harbor); Puget  
2 Sound, Washington; New York-New Jersey  
3 Harbor, New York and New Jersey; Delaware  
4 Bay, Delaware and New Jersey; Delaware In-  
5 land Bays, Delaware; Albemarle Sound, North  
6 Carolina; Sarasota Bay, Florida; San Francisco  
7 Bay, California; Santa Monica Bay, California;  
8 Galveston Bay, Texas; Barataria-Terrebonne  
9 Bay estuary complex, Louisiana; Indian River  
10 Lagoon, Florida; Charlotte Harbor, Florida;  
11 Barnegat Bay, New Jersey; and Peconic Bay,  
12 New York.”.

13 (b) GRANTS.—Section 320(g)(2) (33 U.S.C.  
14 1330(g)(2)) is amended by inserting “and implementation  
15 monitoring” after “development”.

16 (c) AUTHORIZATION OF APPROPRIATIONS.—Section  
17 320(i) (33 U.S.C. 1330(i)) is amended by striking “1987”  
18 and all that follows through “1991” and inserting the fol-  
19 lowing: “1987 through 1991, such sums as may be nec-  
20 essary for fiscal years 1992 through 1995, and  
21 \$19,000,000 per fiscal year for each of fiscal years 1996  
22 through 2000”.

23 **SEC. 321. STATE WATERSHED MANAGEMENT PROGRAMS.**

24 (a) ESTABLISHMENT.—Title III (33 U.S.C. 1311–  
25 1330) is amended by adding at the end the following:

1 **“SEC. 321. STATE WATERSHED MANAGEMENT PROGRAMS.**

2 “(a) STATE WATERSHED MANAGEMENT PRO-  
3 GRAM.—

4 “(1) SUBMISSION OF PROGRAM TO ADMINIS-  
5 TRATOR.—A State, at any time, may submit a wa-  
6 tershed management program to the Administrator  
7 for approval.

8 “(2) APPROVAL.—If the Administrator does not  
9 disapprove a State watershed management program  
10 within 180 days of its submittal or 240 days of a  
11 request for a public hearing pursuant to paragraph  
12 (3) with respect to the program, whichever is later,  
13 such program shall be deemed approved for the pur-  
14 poses of this section. The Administrator shall ap-  
15 prove the program if the program includes, at a  
16 minimum, the following elements:

17 “(A) The identification of the State agency  
18 with primary responsibility for overseeing and  
19 approving watershed management plans in gen-  
20 eral.

21 “(B) The description of any responsible  
22 entities (including any appropriate State agency  
23 or substate agency) to be utilized in implement-  
24 ing the program and a description of their re-  
25 sponsibilities.

1           “(C) A description of the scope of the pro-  
2           gram. In establishing the scope of the program,  
3           the State may address one or more watersheds,  
4           or pollutants, concurrently or sequentially. The  
5           scope of the State program may expand over  
6           time with respect to the watersheds, pollutants,  
7           and factors to be addressed under the program.  
8           In developing the State program, the State  
9           shall take into account all regional and local  
10          government watershed management programs  
11          that are consistent with the proposed State pro-  
12          gram and shall consult with the regional and  
13          local governments that developed such pro-  
14          grams. The State shall consider recommenda-  
15          tions from units of general purpose government,  
16          special purpose districts, local water suppliers,  
17          and appropriate water management agencies in  
18          the development and scope of the program.

19          “(D) Provisions for carrying out an analy-  
20          sis, consistent with the established scope of the  
21          program, of the problems within each watershed  
22          covered under the program.

23          “(E) An identification of watershed man-  
24          agement units for which management plans will  
25          be developed, taking into consideration those

1 waters where water quality is threatened or im-  
2 paired or otherwise in need of special protec-  
3 tion. A watershed management unit identified  
4 under the program may include waters and as-  
5 sociated land areas in more than 1 State if the  
6 Governors of the States affected jointly des-  
7 ignate the watershed management unit and may  
8 include waters and associated lands managed or  
9 owned by the Federal Government.

10 “(F) A description of the activities re-  
11 quired of responsible entities (as specified under  
12 subsection (e)(1)) and a description of the wa-  
13 tershed plan approval process of the State.

14 “(G) Documentation of the public partici-  
15 pation in development of the program and de-  
16 scription of the procedures that will be used for  
17 public participation in the development and im-  
18 plementation of watershed plans.

19 “(H) The identification of goals that will  
20 be pursued in each watershed, including attain-  
21 ment of State water quality standards (includ-  
22 ing site-specific water quality standards) and  
23 the goals and objectives of this Act.

24 “(I) An exclusion from the program of fed-  
25 erally approved activities with respect to linear

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

4 “(J) A description of the process for con-  
5 sideration of and achieving consistency with the  
6 purposes of sections 319 and 322.

7 “(3) DISAPPROVAL PROCESS.—If the Adminis-  
8 trator intends to disapprove a program of a State  
9 submitted under this subsection, the Administrator  
10 shall by a written notification advise the State of the  
11 intent to disapprove and the reasons for disapproval.  
12 If, within 30 days of receipt of such notice, a State  
13 so requests, the Administrator shall conduct a public  
14 hearing in the State on the intent to disapprove and  
15 the reasons for such disapproval. A State may re-  
16 submit a revised program that addresses the reasons  
17 contained in the notification. If a State requests a  
18 public hearing, the Administrator shall conduct the  
19 hearing in that State and issue a final determination  
20 within 240 days of receipt of the State watershed  
21 management program submittal.

22 “(4) MODIFICATION OF PROGRAM.—Each State  
23 with a watershed management program that has  
24 been approved by the Administrator under this sec-  
25 tion may, at any time, modify the watershed man-

1       agement program. Any such modification shall be  
2       submitted to the Administrator and shall remain in  
3       effect unless and until the Administrator determines  
4       that the modified program no longer meets the re-  
5       quirements of this section. In such event, the provi-  
6       sions of paragraph (3) shall apply.

7           “(5) STATUS REPORTS.—Each State with a wa-  
8       tershed management program that has been ap-  
9       proved by the Administrator pursuant to this sub-  
10      section shall, not later than 1 year after the date of  
11      approval, and annually thereafter, submit to the Ad-  
12      ministrator an annual watershed program summary  
13      status report that includes descriptions of any modi-  
14      fications to the program. The status report shall in-  
15      clude a listing of requests made for watershed plan  
16      development and a listing of plans prepared and  
17      submitted by local or regional entities and the ac-  
18      tions taken by the State on such plans including the  
19      reasons for those actions. In consultation and co-  
20      ordination with the Administrator, a State may use  
21      the report to satisfy, in full or in part, any reporting  
22      requirements under sections 106, 303(d), 305(b),  
23      314, 319, 320, 322, and 604(b).

24      “(b) WATERSHED AREA IN 2 OR MORE STATES.—

25    If a watershed management unit is designated to include



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

5 “(c) ELIGIBLE WATERSHED MANAGEMENT AND  
6 PLANNING ACTIVITIES.—

7 “(1) IN GENERAL.—In addition to activities eli-  
8 gible to receive assistance under other sections of  
9 this Act as of the date of the enactment of this sub-  
10 section, the following watershed management activi-  
11 ties conducted by or on behalf of the States pursu-  
12 ant to a watershed management program that is ap-  
13 proved by the Administrator under this section shall  
14 be considered to be eligible to receive assistance  
15 under sections 106, 205(j), 319(h), 320, and 604(b):

16 “(A) Characterizing the waters and land  
17 uses.

18 “(B) Identifying and evaluating problems  
19 within the watershed.

20 “(C) Selecting short-term and long-term  
21 goals for watershed management.

22 “(D) Developing and implementing water  
23 quality standards, including site-specific water  
24 quality standards.

1           “(E) Developing and implementing meas-  
2           ures and practices to meet identified goals.

3           “(F) Identifying and coordinating projects  
4           and activities necessary to restore or maintain  
5           water quality or other related environmental ob-  
6           jectives within the watershed.

7           “(G) Identifying the appropriate institu-  
8           tional arrangements to carry out a watershed  
9           management plan that has been approved or  
10          adopted by the State under this section.

11          “(H) Updating the plan.

12          “(I) Conducting training and public par-  
13          ticipation activities.

14          “(J) Research to study benefits of existing  
15          watershed program plans and particular aspects  
16          of the plans.

17          “(K) Implementing any other activity con-  
18          sidered appropriate by the Administrator or the  
19          Governor of a State with an approved program.

20          “(2) FACTORS TO BE CONSIDERED.—In select-  
21          ing watershed management activities to receive as-  
22          sistance pursuant to paragraph (1), the following  
23          factors shall be considered:

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

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

3           “(B) Whether the activity will promote wa-  
4           tershed problem prioritization.

5           “(C) Whether or not the applicant can  
6           demonstrate an ability to use Federal resources  
7           to leverage non-Federal public and private mon-  
8           etary and in-kind support from voluntary con-  
9           tributions, including matching and cost sharing  
10          incentives.

11          “(D) Whether or not the applicant pro-  
12          poses to use existing public and private pro-  
13          grams to facilitate water quality improvement  
14          with the assistance to be provided pursuant to  
15          paragraph (1).

16          “(E) Whether or not such assistance will  
17          be used to promote voluntary activities, includ-  
18          ing private wetlands restoration, mitigation  
19          banking, and pollution prevention to achieve  
20          water quality standards.

21          “(F) Whether or not such assistance will  
22          be used to market mechanisms to enhance ex-  
23          isting programs.

24          “(d) PUBLIC PARTICIPATION.—Each State shall es-  
25          tablish procedures to encourage the public to participate

1 in its program and in developing and implementing com-  
2 prehensive watershed management plans under this sec-  
3 tion. A State watershed management program shall in-  
4 clude a process for public involvement in watershed man-  
5 agement, to the maximum extent practicable, including the  
6 formation and participation of public advisory groups dur-  
7 ing State watershed program development. States must  
8 provide adequate public notice and an opportunity to com-  
9 ment on the State watershed program prior to submittal  
10 of the program to the Administrator for approval.

11 “(e) APPROVED OR STATE-ADOPTED PLANS.—

12 “(1) REQUIREMENTS.—A State with a water-  
13 shed management program that has been approved  
14 by the Administrator under this section may approve  
15 or adopt a watershed management plan if the plan  
16 satisfies the following conditions:

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

20 “(i) identifies the objectives of the  
21 plan, including, at a minimum, State water  
22 quality standards (including site-specific  
23 water quality standards) and goals and ob-  
24 jectives under this Act;

1           “(ii) identifies pollutants, sources, ac-  
2           tivities, and any other factors causing the  
3           impairment of the waters;

4           “(iii) identifies cost effective actions  
5           that are necessary to achieve the objectives  
6           of the plan, including reduction of pollut-  
7           ants to achieve any allocated load reduc-  
8           tions consistent with the requirements of  
9           section 303(d), and the priority for imple-  
10          menting the actions;

11          “(iv) contains an implementation  
12          schedule with milestones and the identi-  
13          fication of persons responsible for imple-  
14          menting the actions;

15          “(v) demonstrates that water quality  
16          standards and other goals and objectives of  
17          this Act will be attained as expeditiously as  
18          practicable but not later than any applica-  
19          ble deadline under this Act;

20          “(vi) contains documentation of the  
21          public participation in the development of  
22          the plan and a description of the public  
23          participation process that will be used dur-  
24          ing the plan implementation;

1           “(vii) specifies a process to monitor  
2           and evaluate progress toward meeting of  
3           the goals of the plan; and

4           “(viii) specifies a process to revise the  
5           plan as necessary.

6           “(B) For waters in the watershed attain-  
7           ing water quality standards at the time of sub-  
8           mission (including threatened waters), the plan  
9           identifies the projects and activities necessary  
10          to maintain water quality standards and attain  
11          or maintain other goals after the date of ap-  
12          proval or adoption of the plan.

13          “(2) TERMS OF APPROVED OR ADOPTED  
14          PLAN.—Each plan that is approved or adopted by a  
15          State under this subsection shall be effective for a  
16          period of not more than 10 years and include a plan-  
17          ning and implementation schedule with milestones  
18          within that period. A revised and updated plan may  
19          be approved or adopted by the State prior to the ex-  
20          piration of the period specified in the plan pursuant  
21          to the same conditions and requirements that apply  
22          to an initial plan for a watershed approved under  
23          this subsection.

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

1 consultation with the States and other interested parties,  
2 shall issue guidance on provisions that States may con-  
3 sider for inclusion in watershed management programs  
4 and State-approved or State-adopted watershed manage-  
5 ment plans under this section.

6 “(g) POLLUTANT TRANSFER OPPORTUNITIES.—

7 “(1) POLLUTANT TRANSFER PILOT  
8 PROJECTS.—Under an approved watershed manage-  
9 ment program, any discharger or source may apply  
10 to a State for approval to offset the impact of its  
11 discharge or release of a pollutant by entering into  
12 arrangements, including the payment of funds, for  
13 the implementation of controls or measures by an-  
14 other discharger or source through a pollution re-  
15 duction credits trading program established as part  
16 of the watershed management plan. The State may  
17 approve such a request if appropriate safeguards are  
18 included to ensure compliance with technology based  
19 controls and to protect the quality of receiving wa-  
20 ters.

21 “(2) INCENTIVE GRANTS.—The Administrator  
22 shall allocate sums made available by appropriations  
23 to carry out pollution reduction credits trading pro-  
24 grams in selected watersheds throughout the coun-  
25 try.

1           “(3) REPORT.—Not later than 36 months after  
2 the date of the enactment of this Act, the Adminis-  
3 trator shall transmit to Congress a report on the re-  
4 sults of the program conducted under this sub-  
5 section.”.

6           (b) INCENTIVES FOR WATERSHED MANAGEMENT.—

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

10          “(r) WATERSHED MANAGEMENT.—

11           “(1) IN GENERAL.—Notwithstanding any other  
12 provision of this Act, a permit may be issued under  
13 this section with a limitation that does not meet ap-  
14 plicable water quality standards if—

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

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

21           “(C) the point source does not have a his-  
22 tory of significant noncompliance with its efflu-  
23 ent limitations under a permit issued under this  
24 section, as determined by the Administrator or



1 a State with authority to issue permits under  
2 this section.

3 “(2) SYNCHRONIZED PERMIT TERMS.—Not-  
4 withstanding subsection (b)(1)(B), the term of a  
5 permit issued under this section may be extended for  
6 an additional period if the discharge is located in a  
7 watershed management unit for which a watershed  
8 management plan will be developed pursuant to sec-  
9 tion 321. Permits extended under this paragraph  
10 shall be synchronized with the approval of the water-  
11 shed management plan of a State adopted pursuant  
12 to section 321.”.

13 (2) MULTIPURPOSE GRANTS.—

14 (A) IN GENERAL.—The Administrator may  
15 provide assistance to a State with a watershed  
16 management program that has been approved  
17 by the Administrator under section 321 in the  
18 form of a multipurpose grant that would pro-  
19 vide for single application, work plan and re-  
20 view, matching, oversight, and end-of-year  
21 closeout requirements for grant funding under  
22 sections 104(b)(3), 104(g), 106, 314(b), 319,  
23 320, and 604(b) of the Federal Water Pollution  
24 Control Act.

1 (B) TERMS.—The Administrator may at-  
2 tach terms that shall apply for more than 1  
3 year to grants made pursuant to this para-  
4 graph. A State that receives a grant under this  
5 paragraph may focus activities funded under  
6 the provisions referred to in subparagraph (A)  
7 on a priority basis in a manner consistent with  
8 watershed management plans approved by the  
9 State under section 321(e) of the Federal  
10 Water Pollution Control Act.

11 (3) PLANNING.—Section 604(b) (33 U.S.C.  
12 1384(b)) is amended by adding at the end the fol-  
13 lowing: “In any fiscal year in which a State is imple-  
14 menting a State watershed management program  
15 approved under section 321, the State may reserve  
16 up to an additional 2 percent of the sums allotted  
17 to the State for such fiscal year for development of  
18 watershed management plans under such program  
19 or \$200,000, whichever is greater, if 50 percent of  
20 the amount reserved under this sentence will be  
21 made available to local entities.”.

22 **SEC. 322. STORMWATER MANAGEMENT PROGRAMS.**

23 (a) STATE PROGRAMS.—Title III (33 U.S.C. 1311 et  
24 seq.) is further amended by adding at the end the follow-  
25 ing new section:

1 **“SEC. 322. STORMWATER MANAGEMENT PROGRAMS.**

2       “(a) PURPOSE.—The purpose of this section is to as-  
3 sist States in the development and implementation of  
4 stormwater control programs in an expeditious and cost  
5 effective manner so as to enable the goals and require-  
6 ments of this Act to be met in each State no later than  
7 15 years after the date of approval of the stormwater man-  
8 agement program of the State. It is recognized that State  
9 stormwater management programs need to be built on a  
10 foundation that voluntary pollution prevention initiatives  
11 represent an approach most likely to succeed in achieving  
12 the objectives of this Act.

13       “(b) STATE ASSESSMENT REPORTS.—

14               “(1) CONTENTS.—After notice and opportunity  
15 for public comment, the Governor of each State, con-  
16 sistent with or as part of the assessment required by  
17 section 319, shall prepare and submit to the Admin-  
18 istrator for approval, a report which—

19                       “(A) identifies those navigable waters with-  
20 in the State which, without additional action to  
21 control pollution from stormwater discharges,  
22 cannot reasonably be expected to attain or  
23 maintain applicable water quality standards or  
24 the goals and requirements of this Act;

25                       “(B) identifies those categories and  
26 subcategories of stormwater discharges that add

1 significant pollution to each portion of the navi-  
2 gable waters identified under subparagraph (A)  
3 in amounts which contribute to such portion  
4 not meeting such water quality standards or  
5 such goals and requirements;

6 “(C) describes the process, including inter-  
7 governmental coordination and public participa-  
8 tion, for identifying measures to control pollu-  
9 tion from each category and subcategory of  
10 stormwater discharges identified in subpara-  
11 graph (B) and to reduce, to the maximum ex-  
12 tent practicable, the level of pollution resulting  
13 from such discharges; and

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

19 “(2) INFORMATION USED IN PREPARATION.—In  
20 developing, reviewing, and revising the report re-  
21 quired by this subsection, the State—

22 “(A) may rely upon information developed  
23 pursuant to sections 208, 303(e), 304(f),  
24 305(b), 314, 319, 320, and 321 and subsection  
25 (h) of this section, information developed from

1 the group stormwater permit application proc-  
2 ess in effect under section 402(p) of this Act on  
3 the day before the date of the enactment of this  
4 Act, and such other information as the State  
5 determines is appropriate; and

6 “(B) may utilize appropriate elements of  
7 the waste treatment management plans devel-  
8 oped pursuant to sections 208(b) and 303, to  
9 the extent such elements are consistent with  
10 and fulfill the requirements of this section.

11 “(3) REVIEW AND REVISION.—Not later than  
12 18 months after the date of the enactment of the  
13 Clean Water Amendments of 1995, and every 5  
14 years thereafter, the State shall review, revise, and  
15 submit to the Administrator the report required by  
16 this subsection.

17 “(c) STATE MANAGEMENT PROGRAMS.—

18 “(1) IN GENERAL.—In substantial consultation  
19 with local governments and after notice and oppor-  
20 tunity for public comment, the Governor of each  
21 State for the State or in combination with the Gov-  
22 ernors of adjacent States shall prepare, based on  
23 available information, and submit to the Adminis-  
24 trator for approval a stormwater management pro-  
25 gram—

1           “(A) that controls pollution added from  
2 stormwater discharges to the navigable waters  
3 within the boundaries of the State and improves  
4 the quality of such waters; and

5           “(B) that the State proposes to establish  
6 and administer under State law or interstate  
7 compact to apply and assure compliance with  
8 this section.

9           The initial program submission must meet the re-  
10 quirements of this subsection and specifically ad-  
11 dress the first 5 fiscal years beginning after the date  
12 of submission of such management program.

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

16           “(A) IDENTIFICATION OF MODEL MANAGE-  
17 MENT PRACTICES AND MEASURES.—Identifica-  
18 tion of the model management practices and  
19 measures which will be undertaken to reduce  
20 pollutant loadings resulting from each category  
21 or subcategory of stormwater discharges des-  
22 ignated under subsection (b)(1)(B), taking into  
23 account the impact of the practice and measure  
24 on ground water quality.

1           “(B) IDENTIFICATION OF PROGRAMS AND  
2 RESOURCES.—Identification of programs and  
3 resources necessary (including, as appropriate,  
4 nonregulatory programs or regulatory pro-  
5 grams, enforceable policies and mechanisms,  
6 technical assistance, financial assistance, edu-  
7 cation, training, technology transfer, and dem-  
8 onstration projects) to manage categories or  
9 subcategories of stormwater discharges to the  
10 degree necessary to provide for reasonable fur-  
11 ther progress toward the goal of attainment of  
12 water quality standards which contain the  
13 stormwater criteria for designated uses of re-  
14 ceiving waters identified under subsection  
15 (b)(1)(A) taking into consideration specific wa-  
16 tershed conditions, by not later than the last  
17 day of the 15-year period beginning on the date  
18 of approval of the State program.

19           “(C) PROGRAM FOR INDUSTRIAL, COMMER-  
20 CIAL, OIL, GAS, AND MINING DISCHARGES.—A  
21 program for categories or subcategories of in-  
22 dustrial, commercial, oil, gas, and mining  
23 stormwater discharges identified under sub-  
24 section (b)(1)(B) for the implementation of  
25 management practices, measures, and programs

1 identified under subparagraphs (A) and (B).

2 The program shall include each of the following:

3 “(i) VOLUNTARY ACTIVITIES.—Vol-  
4 untary stormwater pollution prevention ac-  
5 tivities for categories and subcategories of  
6 such stormwater discharges that are not  
7 contaminated by contact with material  
8 handling equipment or activities, heavy in-  
9 dustrial machinery, raw materials, inter-  
10 mediate products, finished products, by-  
11 products, or waste products at the site of  
12 the industrial, commercial, oil, gas, or min-  
13 ing activity. Such discharges may have in-  
14 cidental contact with buildings or motor  
15 vehicles.

16 “(ii) ENFORCEABLE PLANS.—En-  
17 forceable stormwater pollution prevention  
18 plans meeting the requirements of sub-  
19 section (d) for those categories and  
20 subcategories of such stormwater dis-  
21 charges that are not described in clause  
22 (i).

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



1 finds, based on available information and  
2 after providing notice and an opportunity  
3 for comment, that reasonable further  
4 progress toward achieving water quality  
5 standards in receiving waters identified by  
6 the State by the date referred to in sub-  
7 paragraph (B) cannot be made despite im-  
8 plementation of voluntary activities under  
9 clause (i) or prevention plans under clause  
10 (ii) due to the presence of a pollutant or  
11 pollutants identified by the State. A facil-  
12 ity in a category or subcategory identified  
13 by the State shall not be subject to a gen-  
14 eral permit under this clause if the facility  
15 demonstrates that stormwater discharges  
16 from the facility are not contributing to a  
17 violation of a water quality standard estab-  
18 lished for designated uses of the receiving  
19 waters and are not significantly contribut-  
20 ing the pollutant or pollutants identified by  
21 the State with respect to the receiving wa-  
22 ters under this clause.

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

1 charges or individual facilities in such cat-  
2 egories or subcategories if the State finds,  
3 based on available information and after  
4 providing notice and an opportunity for  
5 comment, that reasonable further progress  
6 toward achieving water quality standards  
7 in receiving waters identified by the State  
8 by the date referred to in subparagraph  
9 (B) cannot be made despite implementa-  
10 tion of voluntary activities under clause (i)  
11 or prevention plans under clause (ii) and  
12 general permits under clause (iii) due to  
13 the presence of a pollutant or pollutants  
14 identified by the State. A facility in a cat-  
15 egory or subcategory identified by the  
16 State shall not be subject to a site-specific  
17 permit under this clause if the facility  
18 demonstrates that stormwater discharges  
19 from the facility are not contributing to a  
20 violation of a water quality standard estab-  
21 lished for designated uses of the receiving  
22 waters and are not significantly contribut-  
23 ing the pollutant or pollutants identified by  
24 the State with respect to the receiving wa-  
25 ters under this clause.

1           “(v) EXEMPTION OF SMALL BUSI-  
2           NESSES.—An exemption for small busi-  
3           nesses identified under subsection  
4           (b)(1)(B) from clause (iii), relating to gen-  
5           eral permits, and clause (iv), relating to  
6           site-specific permits, unless the State finds  
7           that, without the imposition of such per-  
8           mits, such discharges will have a signifi-  
9           cant adverse effect on water quality.

10          “(D) PROGRAM FOR MUNICIPAL DIS-  
11          CHARGES.—A program for municipal  
12          stormwater discharges identified under sub-  
13          section (b)(1)(B) to reduce pollutant loadings  
14          from categories and subcategories of municipal  
15          stormwater discharges.

16          “(E) PROGRAM FOR CONSTRUCTION AC-  
17          TIVITIES.—A program for categories and  
18          subcategories of stormwater discharges from  
19          construction activities identified under sub-  
20          section (b)(1)(B) for implementation of man-  
21          agement practices, measures, and programs  
22          identified under subparagraphs (A) and (B). In  
23          developing the program, the State shall consider  
24          current State and local requirements, focus on  
25          pollution prevention through the use of model

1 management practices and measures, and take  
2 into account the land area disturbed by the con-  
3 struction activities. The State may require ef-  
4 fluent limits or other numerical standards to  
5 control pollutants in stormwater discharges  
6 from construction activities only if the State  
7 finds, after providing notice and an opportunity  
8 for comment, that such standards are necessary  
9 to achieve water quality standards by the date  
10 referred to in subparagraph (B).

11 “(F) BAD ACTOR PROVISIONS.—Provisions  
12 for taking any actions deemed necessary by the  
13 State to meet the goals and requirements of  
14 this section with respect to dischargers which  
15 the State identifies, after notice and oppor-  
16 tunity for hearing—

17 “(i) as having a history of stormwater  
18 noncompliance under this Act, State law,  
19 or the regulations issued thereunder or the  
20 terms and conditions of permits, orders, or  
21 administrative actions issued pursuant  
22 thereto; or

23 “(ii) as posing an imminent threat to  
24 human health and the environment.

1           “(G) SCHEDULE.—A schedule containing  
2 interim goals and milestones for making reason-  
3 able progress toward the attainment of stand-  
4 ards as set forth in subparagraph (B) estab-  
5 lished for the designated uses of receiving wa-  
6 ters, taking into account specific watershed con-  
7 ditions, which may be demonstrated by one or  
8 any combination of improvements in water  
9 quality (including biological indicators), docu-  
10 mented implementation of voluntary stormwater  
11 discharge control measures, or adoption of en-  
12 forceable stormwater discharge control meas-  
13 ures.

14           “(H) CERTIFICATION OF ADEQUATE AU-  
15 THORITY.—

16           “(i) IN GENERAL.—A certification by  
17 the Attorney General of the State or  
18 States (or the chief attorney of any State  
19 water pollution control agency that has au-  
20 thority under State law to make such cer-  
21 tification) that the laws of the State or  
22 States, as the case may be, provide ade-  
23 quate authority to implement such man-  
24 agement program or, if there is not such  
25 adequate authority, a list of such addi-

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

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

7            “(I) IDENTIFICATION OF FEDERAL FINAN-  
8            CIAL ASSISTANCE PROGRAMS.—An identifica-  
9            tion of Federal financial assistance programs  
10           and Federal development projects for which the  
11           State will review individual assistance applica-  
12           tions or development projects for their effect on  
13           water quality pursuant to the procedures set  
14           forth in Executive Order 12372 as in effect on  
15           September 17, 1983, to determine whether such  
16           assistance applications or development projects  
17           would be consistent with the program prepared  
18           under this subsection; for the purposes of this  
19           subparagraph, identification shall not be limited  
20           to the assistance programs or development  
21           projects subject to Executive Order 12372 but  
22           may include any programs listed in the most re-  
23           cent Catalog of Federal Domestic Assistance  
24           which may have an effect on the purposes and

1 objectives of the State's stormwater manage-  
2 ment program.

3 “(J) MONITORING.—A description of the  
4 monitoring of navigable waters or other assess-  
5 ment which will be carried out under the pro-  
6 gram for the purposes of monitoring and as-  
7 sessing the effectiveness of the program, includ-  
8 ing the attainment of interim goals and mile-  
9 stones.

10 “(K) IDENTIFICATION OF CERTAIN INCON-  
11 SISTENT FEDERAL ACTIVITIES.—An identifica-  
12 tion of activities on Federal lands in the State  
13 that are inconsistent with the State manage-  
14 ment program.

15 “(L) IDENTIFICATION OF GOALS AND  
16 MILESTONES.—An identification of goals and  
17 milestones for progress in attaining water qual-  
18 ity standards, including a projected date for at-  
19 taining such standards as expeditiously as prac-  
20 ticable but not later than 15 years after the  
21 date of approval of the State program for each  
22 of the waters listed pursuant to subsection (b).

23 “(3) UTILIZATION OF LOCAL AND PRIVATE EX-  
24 PERTS.—In developing and implementing a manage-  
25 ment program under this subsection, a State shall,

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

4 “(4) DEVELOPMENT ON WATERSHED BASIS.—A  
5 State shall, to the maximum extent practicable, de-  
6 velop and implement a stormwater management pro-  
7 gram under this subsection on a watershed-by-water-  
8 shed basis within such State.

9 “(5) REGULATIONS DEFINING SMALL BUSI-  
10 NESSES.—Working in conjunction with the Adminis-  
11 trator of the Small Business Administration and the  
12 Small Business Ombudsman of the Environmental  
13 Protection Agency, the Administrator shall propose,  
14 not later than 6 months after the date of the enact-  
15 ment of this section, and issue, not later than 1 year  
16 after the date of such enactment, regulations to de-  
17 fine small businesses for purposes of this section.

18 “(d) STORMWATER POLLUTION PREVENTION  
19 PLANS.—

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



1           “(2) PLAN CONTENTS.—Each stormwater pol-  
2 lution prevention plan required under subsection  
3 (c)(2)(C)(ii) shall include the following components:

4           “(A) Establishment and appointment of a  
5 stormwater pollution prevention team.

6           “(B) Description of potential pollutant  
7 sources.

8           “(C) An annual site inspection evaluation.

9           “(D) An annual visual stormwater dis-  
10 charge inspection.

11           “(E) Measures and controls for reducing  
12 stormwater pollution, including, at a minimum,  
13 model management practices and measures that  
14 are flexible, technologically feasible, and eco-  
15 nomically practicable. For purposes of this  
16 paragraph, the term ‘model management prac-  
17 tices and measures’ means preventive mainte-  
18 nance, good housekeeping, spill prevention and  
19 response, employee training, and sediment and  
20 erosion control.

21           “(F) Prevention of illegal discharges of  
22 nonstormwater through stormwater outfalls.

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

1       tion plan or a State or local equivalent and that the  
2       plan is intended to reduce possible pollutants in the  
3       facility’s stormwater discharges. The certification  
4       must be signed by a responsible officer of the facility  
5       and must be affixed to the plan subject to review by  
6       the appropriate State program authority. If a facil-  
7       ity makes such a certification, such facility shall not  
8       be subject to permit or permit application require-  
9       ments, mandatory model management practices and  
10      measures, analytical monitoring, effluent limitations  
11      or other numerical standards or guidelines under  
12      subsection (c)(2)(C)(ii).

13           “(4) PLAN ADEQUACY.—The State stormwater  
14      management program shall set forth the basis upon  
15      which the adequacy of a plan prepared by a facility  
16      subject to subsection (c)(2)(C)(ii) will be determined.  
17      In making such determination, the State shall con-  
18      sider benefits to the environment, physical require-  
19      ments, technological feasibility and economic costs,  
20      human health or safety, and nature of the activity  
21      at the facility or site. If, upon review of a  
22      stormwater pollution prevention plan, the State de-  
23      termines that the plan is inadequate, the State may  
24      require the facility to modify the plan.

25           “(e) ADMINISTRATIVE PROVISIONS.—

1           “(1) COOPERATION REQUIREMENT.—Any re-  
2           port required by subsection (b) and any management  
3           program and report required by subsection (c) shall  
4           be developed in cooperation with local, substate, re-  
5           gional, and interstate entities which are responsible  
6           for implementing stormwater management pro-  
7           grams.

8           “(2) TIME PERIOD FOR SUBMISSION OF MAN-  
9           AGEMENT PROGRAMS.—Each management program  
10          shall be submitted to the Administrator within 30  
11          months of the issuance by the Administrator of the  
12          final guidance under subsection (l) and every 5 years  
13          thereafter. Each program submission after the initial  
14          submission following the date of the enactment of  
15          the Clean Water Amendments of 1995 shall include  
16          a demonstration of reasonable further progress to-  
17          ward the goal of attaining water quality standards  
18          as set forth in subsection (c)(2) established for des-  
19          ignated uses of receiving waters taking into account  
20          specific watershed conditions by not later than the  
21          date referred to in subsection (b)(2)(B), including a  
22          documentation of the degree to which the State has  
23          achieved the interim goals and milestones contained  
24          in the previous program submission. Such dem-

1 onstration shall take into account the adequacy of  
2 Federal funding under this section.

3 “(3) TRANSITION.—

4 “(A) IN GENERAL.—Permits, including  
5 group and general permits, issued pursuant to  
6 section 402(p), as in effect on the day before  
7 the date of the enactment of this section, shall  
8 remain in effect until the effective date of a  
9 State stormwater management program under  
10 this section. Stormwater dischargers shall con-  
11 tinue to implement any stormwater manage-  
12 ment practices and measures required under  
13 such permits until such practices and measures  
14 are modified pursuant to this subparagraph or  
15 pursuant to a State stormwater management  
16 program. Prior to the effective date of a State  
17 stormwater management program, stormwater  
18 dischargers may submit for approval proposed  
19 revised stormwater management practices and  
20 measures to the State, in the case of a State  
21 with an approved program under section 402,  
22 or the Administrator. Upon notice of approval  
23 by the State or the Administrator, the  
24 stormwater discharger shall implement the re-  
25 vised stormwater management practices and

1 measures which, for discharges subject to sub-  
2 section (c)(2)(C)(i), (c)(2)(D), or (c)(2)(E),  
3 may be voluntary pollution prevention activities.  
4 A stormwater discharger operating under a per-  
5 mit continued in effect under this subparagraph  
6 shall not be subject to citizens suits under sec-  
7 tion 505.

8 “(B) NEW FACILITIES.—A new  
9 nonmunicipal source of stormwater discharge  
10 subject to a group or general permit continued  
11 in effect under subparagraph (A) shall notify  
12 the State or the Administrator, as appropriate,  
13 of the source’s intent to be covered by and shall  
14 continue to comply with such permit. Until the  
15 effective date of a State stormwater manage-  
16 ment program under this section, the State may  
17 impose enforceable stormwater management  
18 measures and practices on a new nonmunicipal  
19 source of stormwater discharge not subject to  
20 such a permit if the State finds that the  
21 stormwater discharge is likely to pose an immi-  
22 nent threat to human health and the environ-  
23 ment or to pose significant impairment of water  
24 quality standards.

1           “(C) SPECIAL RULE.—Industrial facilities  
2 included in a Part 1 group stormwater permit  
3 application approved by the Administrator pur-  
4 suant to section 122.26(c)(2) of title 40, Code  
5 of Federal Regulations, as in effect on the date  
6 of the enactment of this section, may, in lieu of  
7 continued operation under existing permits, cer-  
8 tify to the State or the Administrator, as appro-  
9 priate, that such facilities are implementing a  
10 stormwater pollution prevention plan consistent  
11 with subsection (d). Upon such certification, the  
12 facility will no longer be subject to such permit.

13           “(D) PRE-1987 PERMITS AND EFFLUENT  
14 GUIDELINES.—Notwithstanding the repeal of  
15 section 402(p) by the Clean Water Amendments  
16 Act of 1995 or any other amendment made to  
17 section 402 on or before the date of the enact-  
18 ment of such Act, a stormwater discharge with  
19 respect to which a permit has been issued under  
20 section 402 before February 4, 1987, or with  
21 respect to which an effluent guideline has been  
22 issued before February 4, 1987 shall not be  
23 subject to the provisions of this section.

1           “(E) ANTIBACKSLIDING.—Section 402(o)  
2           shall not apply to any activity carried out in ac-  
3           cordance with this paragraph.

4           “(f) APPROVAL OR DISAPPROVAL OF REPORTS OR  
5 MANAGEMENT PROGRAMS.—

6           “(1) DEADLINE.—Subject to paragraph (2),  
7           not later than 180 days after the date of submission  
8           to the Administrator of any report or revised report  
9           or management program under this section, the Ad-  
10          ministrator shall either approve or disapprove such  
11          report or management program, as the case may be.  
12          The Administrator may approve a portion of a man-  
13          agement program under this subsection. If the Ad-  
14          ministrator does not disapprove a report, manage-  
15          ment program, or portion of a management program  
16          in such 180-day period, such report, management  
17          program, or portion shall be deemed approved for  
18          purposes of this section.

19          “(2) PROCEDURE FOR DISAPPROVAL.—If, after  
20          notice and opportunity for public comment and con-  
21          sultation with appropriate Federal and State agen-  
22          cies and other interested persons, the Administrator  
23          determines that—

24                  “(A) the proposed management program  
25                  or any portion thereof does not meet the re-

1            requirements of subsection (c) of this section or  
2            is not likely to satisfy, in whole or in part, the  
3            goals and requirements of this Act;

4                  “(B) adequate authority does not exist, or  
5            adequate resources are not available, to imple-  
6            ment such program or portion; or

7                  “(C) the practices and measures proposed  
8            in such program or portion will not result in  
9            reasonable progress toward the goal of attain-  
10          ment of applicable water quality standards as  
11          set forth in subsection (c)(2) established for  
12          designated uses of receiving waters taking into  
13          consideration specific watershed conditions as  
14          expeditiously as possible but not later than 15  
15          years after approval of a State stormwater  
16          management program under this section;

17          the Administrator shall within 6 months of the re-  
18          ceipt of the proposed program notify the State of  
19          any revisions or modifications necessary to obtain  
20          approval. The State shall have an additional 6  
21          months to submit its revised management program,  
22          and the Administrator shall approve or disapprove  
23          such revised program within 3 months of receipt.

24                “(3) FAILURE OF STATE TO SUBMIT REPORT.—  
25          If a Governor of a State does not submit a report



1 or revised report required by subsection (b) within  
2 the period specified by subsection (e)(2), the Admin-  
3 istrator shall, within 18 months after the date on  
4 which such report is required to be submitted under  
5 subsection (b), prepare a report for such State which  
6 makes the identifications required by paragraphs  
7 (1)(A) and (1)(B) of subsection (b). Upon comple-  
8 tion of the requirement of the preceding sentence  
9 and after notice and opportunity for a comment, the  
10 Administrator shall report to Congress of the actions  
11 of the Administrator under this section.

12 “(4) FAILURE OF STATE TO SUBMIT MANAGE-  
13 MENT PROGRAM.—

14 “(A) PROGRAM MANAGEMENT BY ADMINIS-  
15 TRATOR.—Subject to paragraph (5), if a State  
16 fails to submit a management program or re-  
17 vised management program under subsection  
18 (c) or the Administrator does not approve such  
19 management program, the Administrator shall  
20 prepare and implement a management program  
21 for controlling pollution added from stormwater  
22 discharges to the navigable waters within the  
23 State and improving the quality of such waters  
24 in accordance with subsection (c).

1           “(B) NOTICE AND HEARING.—If the Ad-  
2           ministrator intends to disapprove a program  
3           submitted by a State the Administrator shall  
4           first notify the Governor of the State, in writ-  
5           ing, of the modifications necessary to meet the  
6           requirements of this section. The Administrator  
7           shall provide adequate public notice and an op-  
8           portunity for a public hearing for all interested  
9           parties.

10           “(C) STATE REVISION OF ITS PROGRAM.—  
11           If, after taking into account the level of funding  
12           actually provided as compared with the level au-  
13           thorized, the Administrator determines that a  
14           State has failed to demonstrate reasonable fur-  
15           ther progress toward the attainment of water  
16           quality standards as required, the State shall  
17           revise its program within 12 months of that de-  
18           termination in a manner sufficient to achieve  
19           attainment of applicable water quality stand-  
20           ards by the deadline established by this section.  
21           If a State fails to make such a program revision  
22           or the Administrator does not approve such a  
23           revision, the Administrator shall prepare and  
24           implement a stormwater management program  
25           for the State.

1           “(5) LOCAL MANAGEMENT PROGRAMS; TECH-  
2           NICAL ASSISTANCE.—If a State fails to submit a  
3           management program under subsection (c) or the  
4           Administrator does not approve such a management  
5           program, a local public agency or organization which  
6           has expertise in, and authority to, control water pol-  
7           lution resulting from nonpoint sources in any area of  
8           such State which the Administrator determines is of  
9           sufficient geographic size may, with approval of such  
10          State, request the Administrator to provide, and the  
11          Administrator shall provide, technical assistance to  
12          such agency or organization in developing for such  
13          area a management program which is described in  
14          subsection (c) and can be approved pursuant to this  
15          subsection. After development of such management  
16          program, such agency or organization shall submit  
17          such management program to the Administrator for  
18          approval.

19          “(g) INTERSTATE MANAGEMENT CONFERENCE.—

20                 “(1) CONVENING OF CONFERENCE; NOTIFICA-  
21                 TION; PURPOSE.—

22                         “(A) CONVENING OF CONFERENCE.—If  
23                         any portion of the navigable waters in any  
24                         State which is implementing a management  
25                         program approved under this section is not

1 meeting applicable water quality standards or  
2 the goals and requirements of this Act as a re-  
3 sult, in whole or in part, of pollution from  
4 stormwater in another State, such State may  
5 petition the Administrator to convene, and the  
6 Administrator shall convene, a management  
7 conference of all States which contribute signifi-  
8 cant pollution resulting from stormwater to  
9 such portion.

10 “(B) NOTIFICATION.—If, on the basis of  
11 information available, the Administrator deter-  
12 mines that a State is not meeting applicable  
13 water quality standards or the goals and re-  
14 quirements of this Act as a result, in whole or  
15 in part, of significant pollution from stormwater  
16 in another State, the Administrator shall notify  
17 such States.

18 “(C) TIME LIMIT.—The Administrator  
19 may convene a management conference under  
20 this paragraph not later than 180 days after  
21 giving such notification under subparagraph  
22 (B), whether or not the State which is not  
23 meeting such standards requests such con-  
24 ference.

1           “(D) PURPOSE.—The purpose of the con-  
2           ference shall be to develop an agreement among  
3           the States to reduce the level of pollution re-  
4           sulting from stormwater in the portion of the  
5           navigable waters and to improve the water qual-  
6           ity of such portion.

7           “(E) PROTECTION OF WATER RIGHTS.—  
8           Nothing in the agreement shall supersede or ab-  
9           rogate rights to quantities of water which have  
10          been established by interstate water compacts,  
11          Supreme Court decrees, or State water laws.

12          “(F) LIMITATIONS.—This subsection shall  
13          not apply to any pollution which is subject to  
14          the Colorado River Basin Salinity Control Act.  
15          The requirement that the Administrator con-  
16          vene a management conference shall not be sub-  
17          ject to the provisions of section 505 of this Act.

18          “(2) STATE MANAGEMENT PROGRAM REQUIRE-  
19          MENT.—To the extent that the States reach agree-  
20          ment through such conference, the management pro-  
21          grams of the States which are parties to such agree-  
22          ments and which contribute significant pollution to  
23          the navigable waters or portions thereof not meeting  
24          applicable water quality standards or goals and re-  
25          quirements of this Act will be revised to reflect such

1 agreement. Such management programs shall be  
2 consistent with Federal and State law.

3 “(h) GRANTS FOR STORMWATER RESEARCH.—

4 “(1) IN GENERAL.—To determine the most  
5 cost-effective and technologically feasible means of  
6 improving the quality of the navigable waters and to  
7 develop the criteria required pursuant to subsection  
8 (i), the Administrator shall establish an initiative  
9 through which the Administrator shall fund State  
10 and local demonstration programs and research to—

11 “(A) identify adverse impacts of  
12 stormwater discharges on receiving waters;

13 “(B) identify the pollutants in stormwater  
14 which cause impact; and

15 “(C) test innovative approaches to address  
16 the impacts of source controls and model man-  
17 agement practices and measures for runoff  
18 from municipal storm sewers.

19 Persons conducting demonstration programs and re-  
20 search funded under this subsection shall also take  
21 into account the physical nature of episodic  
22 stormwater flows, the varying pollutants in  
23 stormwater, the actual risk the flows pose to the  
24 designated beneficial uses, and the ability of natural  
25 ecosystems to accept temporary stormwater events.

1           “(2) AWARD OF FUNDS.—The Administrator  
2 shall award the demonstration and research program  
3 funds taking into account regional and population  
4 variations.

5           “(3) AUTHORIZATION OF APPROPRIATIONS.—  
6 There are authorized to be appropriated to carry out  
7 this subsection \$20,000,000 per fiscal year for fiscal  
8 years 1996 through 2000. Such sums shall remain  
9 available until expended.

10           “(4) INADEQUATE FUNDING.—For each fiscal  
11 year beginning after the date of the enactment of  
12 this subsection for which the total amounts appro-  
13 priated to carry out this subsection are less than the  
14 total amounts authorized to be appropriated pursu-  
15 ant to this subsection, any deadlines established  
16 under subsection (c)(2)(L) for compliance with  
17 water quality standards shall be postponed by 1  
18 year.

19           “(i) COLLECTION OF INFORMATION.—The Adminis-  
20 trator shall collect and make available, through publica-  
21 tions and other appropriate means, information pertaining  
22 to model management practices and measures and imple-  
23 mentation methods, including, but not limited to—

24           “(1) information concerning the costs and rel-  
25 ative efficiencies of model management practices and

1 measures for reducing pollution from stormwater  
2 discharges; and

3 “(2) available data concerning the relationship  
4 between water quality and implementation of various  
5 management practices to control pollution from  
6 stormwater discharges.

7 “(j) REPORTS OF ADMINISTRATOR.—

8 “(1) BIENNIAL REPORTS.—Not later than Jan-  
9 uary 1, 1998, and biennially thereafter, the Adminis-  
10 trator shall transmit to the Committee on Transpor-  
11 tation and Infrastructure of the House of Represent-  
12 atives and the Committee on Environment and Pub-  
13 lic Works of the Senate, a report for the preceding  
14 fiscal year on the activities and programs imple-  
15 mented under this section and the progress made in  
16 reducing pollution in the navigable waters resulting  
17 from stormwater discharges and improving the qual-  
18 ity of such waters.

19 “(2) CONTENTS.—Each report submitted under  
20 paragraph (1), at a minimum shall—

21 “(A) describe the management programs  
22 being implemented by the States by types of af-  
23 fected navigable waters, categories and  
24 subcategories of stormwater discharges, and  
25 types of measures being implemented;



1           “(B) describe the experiences of the States  
2 in adhering to schedules and implementing the  
3 measures under subsection (c);

4           “(C) describe the amount and purpose of  
5 grants awarded pursuant to subsection (h);

6           “(D) identify, to the extent that informa-  
7 tion is available, the progress made in reducing  
8 pollutant loads and improving water quality in  
9 the navigable waters;

10           “(E) indicate what further actions need to  
11 be taken to attain and maintain in those navi-  
12 gable waters (i) applicable water quality stand-  
13 ards, and (ii) the goals and requirements of this  
14 Act;

15           “(F) include recommendations of the Ad-  
16 ministrator concerning future programs (includ-  
17 ing enforcement programs) for controlling pol-  
18 lution from stormwater; and

19           “(G) identify the activities and programs  
20 of departments, agencies, and instrumentalities  
21 of the United States that are inconsistent with  
22 the stormwater management programs imple-  
23 mented by the States under this section and  
24 recommended modifications so that such activi-  
25 ties and programs are consistent with and as-

1           sist the States in implementation of such man-  
2           agement programs.

3           “(k) GUIDANCE ON MODEL MANAGEMENT PRAC-  
4           TICES AND MEASURES.—

5           “(1) IN GENERAL.—The Administrator, in con-  
6           sultation with appropriate Federal, State, and local  
7           departments and agencies, and after providing notice  
8           and opportunity for public comment, shall publish  
9           guidance to identify model management practices  
10          and measures which may be undertaken, at the dis-  
11          cretion of the State or appropriate entity, under a  
12          management program established pursuant to this  
13          section. In preparing such guidance, the Adminis-  
14          trator shall consider integration of a stormwater  
15          management program of a State with, and the rela-  
16          tionship of such program to, the nonpoint source  
17          management program of the State under section  
18          319.

19          “(2) PUBLICATION.—The Administrator shall  
20          publish proposed guidance under this subsection not  
21          later than 6 months after the date of the enactment  
22          of this subsection and shall publish final guidance  
23          under this subsection not later than 18 months after  
24          such date of enactment. The Administrator shall pe-  
25          riodically review and revise the final guidance upon

1 adequate notice and opportunity for public comment  
2 at least once every 3 years after its publication.

3 “(3) MODEL MANAGEMENT PRACTICES AND  
4 MEASURES DEFINED.—For the purposes of this sub-  
5 section and section 304(a)(13), the term “model  
6 management practices and measures” means eco-  
7 nomically achievable measures for the control of pol-  
8 lutants from stormwater discharges which reflect the  
9 most cost-effective degree of pollutant reduction  
10 achievable through the application of the best avail-  
11 able practices, technologies, processes, siting criteria,  
12 operating methods, or other alternatives.

13 “(l) ENFORCEMENT WITH RESPECT TO  
14 STORMWATER DISCHARGERS VIOLATING STATE MANAGE-  
15 MENT PROGRAMS.—Stormwater dischargers that do not  
16 comply with State management program requirements  
17 under subsection (c) are subject to applicable enforcement  
18 actions under sections 309 and 505 of this Act.

19 “(m) ENTRY AND INSPECTION.—In order to carry  
20 out the objectives of this section, an authorized represent-  
21 ative of a State, upon presentation of his or her creden-  
22 tials, shall have a right of entry to, upon, or through any  
23 property at which a stormwater discharge or records re-  
24 quired to be maintained under the State stormwater man-  
25 agement program are located.

1       “(n) LIMITATION ON DISCHARGES REGULATED  
2 UNDER WATERSHED MANAGEMENT PROGRAM.—  
3 Stormwater discharges regulated under section 321 in a  
4 manner consistent with this section shall not be subject  
5 to this section.

6       “(o) MINERAL EXPLORATION AND MINING SITES.—

7           “(1) EXPLORATION SITES.—For purposes of  
8 subsection (c)(2)(F), stormwater discharges from  
9 construction activities shall include stormwater dis-  
10 charges from mineral exploration activities; except  
11 that, for exploration at abandoned mined lands, the  
12 stormwater program under subsection (c)(2)(F)  
13 shall be limited to the control of pollutants added to  
14 stormwater by contact with areas disturbed by the  
15 exploration activity.

16           “(2) MINING SITES.—Stormwater discharges at  
17 ore mining and dressing sites shall be subject to this  
18 section. If any such discharge is commingled with  
19 mine drainage or process wastewater from mining  
20 operations, such discharge shall be treated as a dis-  
21 charge from a point source for purposes of this Act.  
22 Land that was previously used for mining activities  
23 for which reclamation requirements of the Surface  
24 Mining Control and Reclamation Act of 1977 have  
25 been met and a performance bond or deposit re-

1        required under section 509 of such Act has been re-  
2        leased under section 519 of such Act shall no longer  
3        be considered an ore mining and dressing site.

4            “(3) ABANDONED MINED LANDS.—Stormwater  
5        discharges from abandoned mined lands shall be  
6        subject to section 319; except that if the State, after  
7        notice and an opportunity for comment, finds that  
8        regulation of such stormwater discharges under this  
9        section is necessary to make reasonable further  
10       progress toward achieving water quality standards  
11       by the date referred to in subsection (c)(2)(B), such  
12       discharges shall be subject to this section.

13           “(4) SURFACE MINING CONTROL AND REC-  
14        LAMATION ACT SITES.—Notwithstanding paragraph  
15        (3), stormwater discharges from abandoned mined  
16        lands site which are subject to the Surface Mining  
17        Control and Reclamation Act of 1977 (30 U.S.C.  
18        1201–1328) shall be subject to section 319.

19           “(5) ACTIVE COAL MINING SITES.—Discharges  
20        comprised entirely of stormwater from an active coal  
21        mining site operating under a permit issued under  
22        the Surface Mining Control and Reclamation Act of  
23        1977 shall be subject to section 319.

24           “(6) DEFINITIONS.—For purposes of this sub-  
25        section, the following definitions apply:

1           “(A) ABANDONED MINED LANDS.—The  
2 term ‘abandoned mined lands’ means lands  
3 which were used for mineral activities and  
4 abandoned or left in an inadequate reclamation  
5 status and for which there is no continuing rec-  
6 lamation responsibility under State or Federal  
7 laws.

8           “(B) PROCESS WASTE WATER.—The term  
9 ‘process waste water’ means any water other  
10 than stormwater which comes into contact with  
11 any raw material, intermediate product, fin-  
12 ished product, byproduct, or waste product as  
13 part of any mineral beneficiation processes em-  
14 ployed at the site.

15           “(C) MINE DRAINAGE.—The term ‘mine  
16 drainage’ means any water drained, pumped, or  
17 siphoned from underground mine workings or  
18 mine pits, but such term shall not include  
19 stormwater runoff from tailings dams, dikes,  
20 overburden, waste rock piles, haul roads, access  
21 roads, and ancillary facility areas.”.

22           (b) REPEAL OF LIMITATION ON PERMIT REQUIRE-  
23 MENT.—Section 402(l) (33 U.S.C. 1342(l)) is repealed.

1 (c) REPEAL OF MUNICIPAL AND INDUSTRIAL  
2 STORMWATER DISCHARGES PROGRAM.—Section 402(p)  
3 (33 U.S.C. 1342(p)) is repealed.

4 (d) DEVELOPMENT OF STORMWATER CRITERIA.—  
5 Section 304(a) is further amended by adding at the end  
6 the following:

7 “(13) DEVELOPMENT OF STORMWATER CRI-  
8 TERIA.—

9 “(A) IN GENERAL.—To reflect the episodic  
10 character of stormwater which results in signifi-  
11 cant variances in the volume, hydraulics, hy-  
12 drology, and pollutant load associated with  
13 stormwater discharges, the Administrator shall  
14 establish, as an element of the water quality  
15 standards established for the designated uses of  
16 the navigable waters, stormwater criteria which  
17 protect the navigable waters from impairment  
18 of the designated beneficial uses caused by  
19 stormwater discharges. The criteria shall be  
20 technologically and financially feasible and may  
21 include performance standards, guidelines,  
22 guidance, and model management practices and  
23 measures and treatment requirements, as ap-  
24 propriate, and as identified in section 322.

1           “(B) INFORMATION TO BE USED IN DE-  
2           VELOPMENT.—The stormwater discharge cri-  
3           teria to be established under this paragraph—

4           “(i) shall be developed from—

5           “(I) the findings and conclusions  
6           of the demonstration programs and  
7           research conducted under section  
8           322(h);

9           “(II) the findings and conclu-  
10          sions of the research and monitoring  
11          activities of stormwater dischargers  
12          performed in compliance with permit  
13          requirements of this Act; and

14          “(III) other relevant information,  
15          including information submitted to  
16          the Administrator under the industrial  
17          group permit application process in  
18          effect under section 402 of this Act on  
19          the day before the date of the enact-  
20          ment of this paragraph;

21          “(ii) shall be developed in consultation  
22          with persons with expertise in the manage-  
23          ment of stormwater (including officials of  
24          State and local government, industrial and



1 commercial stormwater dischargers, and  
2 public interest groups); and

3 “(iii) shall be established as an ele-  
4 ment of the water quality standards that  
5 are developed and implemented under this  
6 Act by not later than December 31,  
7 2008.”.

8 (e) DEFINITIONS.—Section 502 (33 U.S.C. 1362) is  
9 amended—

10 (1) by adding at the end of paragraph (14) the  
11 following: “The term does not include a stormwater  
12 discharge that is subject to section 322.”; and

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

14 “(25) The term ‘stormwater’ means runoff from rain,  
15 snow melt, or any other precipitation-generated surface  
16 runoff.

17 “(26) The term ‘stormwater discharge’ means a dis-  
18 charge from any conveyance which is used for the collect-  
19 ing and conveying of stormwater to navigable waters and  
20 which is associated with a municipal storm sewer system  
21 or industrial, commercial, oil, gas, or mining activities or  
22 construction activities.”.

1 **SEC. 323. RISK ASSESSMENT AND DISCLOSURE REQUIRE-**  
2 **MENTS.**

3 Title III (33 U.S.C. 1311–1330) is further amended  
4 by adding at the end the following:

5 **“SEC. 323. RISK ASSESSMENT AND DISCLOSURE REQUIRE-**  
6 **MENTS.**

7 “(a) GENERAL RULE.—The Administrator or the  
8 Secretary of the Army (hereinafter in this section referred  
9 to as the ‘Secretary’), as appropriate, shall develop and  
10 publish a risk assessment before issuing—

11 “(1) any standard, effluent limitation, water  
12 quality criterion, water quality based requirement, or  
13 other regulatory requirement under this Act (other  
14 than a permit or a purely procedural requirement);  
15 or

16 “(2) any guidance under this Act which, if is-  
17 sued as a regulatory requirement, would result in an  
18 annual increase in cost of \$25,000,000 or more.

19 “(b) CONTENTS OF RISK ASSESSMENTS.—A risk as-  
20 sessment developed under subsection (a), at a minimum,  
21 shall—

22 “(1) identify and use all relevant and readily  
23 obtainable data and information of sufficient quality,  
24 including data and information submitted to the  
25 Agency in a timely fashion;

1           “(2) identify and discuss significant assump-  
2           tions, inferences, or models used in the risk assess-  
3           ment;

4           “(3) measure the sensitivity of the results to  
5           the significant assumptions, inferences, or models  
6           that the risk assessment relies upon;

7           “(4) with respect to significant assumptions, in-  
8           ferences, or models that the results are sensitive to,  
9           identify and discuss—

10           “(A) credible alternatives and the basis for  
11           the rejection of such alternatives;

12           “(B) the scientific or policy basis for the  
13           selection of such assumptions, inferences, or  
14           models; and

15           “(C) the extent to which any such assump-  
16           tions, inferences, or models have been validated  
17           or conflict with empirical data;

18           “(5) to the maximum extent practical, provide  
19           a description of the risk, including, at minimum,  
20           best estimates or other unbiased representation of  
21           the most plausible level of risk and a description of  
22           the specific populations or natural resources subject  
23           to the assessment;

1           “(6) to the maximum extent practical, provide  
2           a quantitative estimate of the uncertainty inherent  
3           in the risk assessment; and

4           “(7) compare the nature and extent of the risk  
5           identified in the risk assessment to other risks to  
6           human health and the environment.

7           “(c) RISK ASSESSMENT GUIDANCE.—Not later than  
8           180 days after the date of the enactment of this section,  
9           and after providing notice and opportunity for public com-  
10          ment, the Administrator, in consultation with the Sec-  
11          retary, shall issue, and thereafter revise, as appropriate,  
12          guidance for conducting risk assessments under subsection  
13          (a).

14          “(d) MARGIN OF SAFETY.—When establishing a mar-  
15          gin of safety for use in developing a regulatory require-  
16          ment described in subsection (a)(1) or guidance described  
17          in subsection (a)(2), the Administrator or the Secretary,  
18          as appropriate, shall provide, as part of the risk assess-  
19          ment under subsection (a), an explicit and, to the extent  
20          practical, quantitative description of the margin of safety  
21          relative to an unbiased estimate of the risk being ad-  
22          dressed.

23          “(e) DISCRETIONARY EXEMPTIONS.—The Adminis-  
24          trator or the Secretary, as appropriate, may exempt from  
25          the requirements of this section any risk assessment pre-

1 pared in support of a regulatory requirement described in  
2 subsection (a)(1) which is likely to result in annual in-  
3 crease in cost of less than \$25,000,000. Such exemptions  
4 may be made for specific risk assessments or classes of  
5 risk assessments.

6 “(f) GENERAL RULE ON APPLICABILITY.—The re-  
7 quirements of this section shall apply to any regulatory  
8 requirement described in subsection (a)(1) or guidance de-  
9 scribed in subsection (a)(2) that is issued after the last  
10 day of the 1-year period beginning on the date of the en-  
11 actment of this section.

12 “(g) SIGNIFICANT REGULATORY ACTIONS AND GUID-  
13 ANCE.—

14 “(1) APPLICABILITY OF REQUIREMENTS.—In  
15 addition to the regulatory requirements and guid-  
16 ance referred to in subsection (f), the requirements  
17 of this section shall apply to—

18 “(A) any standard, effluent limitation,  
19 water quality criterion, water quality based re-  
20 quirement, or other regulatory requirement is-  
21 sued under this Act during the period described  
22 in paragraph (2) which is likely to result in an  
23 annual increase in cost of \$100,000,000 or  
24 more; and

1           “(B) any guidance issued under this Act  
2           during the period described in paragraph (2)  
3           which, if issued as a regulatory requirement,  
4           would be likely to result in annual increase in  
5           cost of \$100,000,000 or more.

6           “(2) COVERED PERIOD.—The period described  
7           in this paragraph is the period beginning on Feb-  
8           ruary 15, 1995, and ending on the last day of the  
9           1-year period beginning on the date of the enact-  
10          ment of this Act.

11          “(3) REVIEW.—Any regulatory requirement de-  
12          scribed in paragraph (1)(A) or guidance described in  
13          paragraph (1)(B) which was issued before the date  
14          of the enactment of this section shall be reviewed  
15          and, with respect to each such requirement or guid-  
16          ance, the Administrator or the Secretary, as appro-  
17          priate, shall based on such review—

18                 “(A) certify that the requirement or guid-  
19                 ance meets the requirements of this section  
20                 without revision; or

21                 “(B) reissue the requirement or guidance,  
22                 after providing notice and opportunity for pub-  
23                 lic comment, with such revisions as may be nec-  
24                 essary for compliance with the requirements of  
25                 this section.

1           “(4) DEADLINE.—Any regulatory requirement  
2           described in paragraph (1)(A) or guidance described  
3           in paragraph (1)(B) for which the Administrator or  
4           the Secretary, as appropriate, does not issue a cer-  
5           tification or revisions under paragraph (3) on or be-  
6           fore the last day of the 18-month period beginning  
7           on the date of the enactment of this section shall  
8           cease to be effective after such last day until the  
9           date on which such certification or revisions are is-  
10          sued.”.

11 **SEC. 324. BENEFIT AND COST CRITERION.**

12          Title III (33 U.S.C. 1311–1330) is further amended  
13          by adding at the end the following:

14 **“SEC. 324. BENEFIT AND COST CRITERION.**

15          “(a) DECISION CRITERION.—

16                 “(1) CERTIFICATION.—The Administrator or  
17                 the Secretary of the Army (hereinafter in this sec-  
18                 tion referred to as the ‘Secretary’), as appropriate,  
19                 shall not issue—

20                         “(A) any standard, effluent limitation, or  
21                         other regulatory requirement under this Act; or

22                         “(B) any guidance under this Act which, if  
23                         issued as a regulatory requirement, would result  
24                         in an annual increase in cost of \$25,000,000 or  
25                         more,

1 unless the Administrator or the Secretary certifies  
2 that the requirement or guidance maximizes net ben-  
3 efits to society. Such certification shall be based on  
4 an analysis meeting the requirements of subsection  
5 (b).

6 “(2) EFFECT OF CRITERION.—Notwithstanding  
7 any other provision of this Act, the decision criterion  
8 of paragraph (1) shall supplement and, to the extent  
9 there is a conflict, supersede the decision criteria  
10 otherwise applicable under this Act; except that the  
11 resulting regulatory requirement or guidance shall  
12 be economically achievable.

13 “(3) SUBSTANTIAL EVIDENCE.—Notwithstand-  
14 ing any other provision of this Act, no regulation or  
15 guidance subject to this subsection shall be issued by  
16 the Administrator or the Secretary unless the re-  
17 quirement of paragraph (1) is met and the certifi-  
18 cation is supported by substantial evidence.

19 “(b) BENEFIT AND COST ANALYSIS GUIDANCE.—

20 “(1) IN GENERAL.—Not later than 180 days  
21 after the date of the enactment of this section, and  
22 after providing notice and opportunity for public  
23 comment, the Administrator, in concurrence with the  
24 Administrator of the Office of Information and Reg-  
25 ulatory Affairs, shall issue, and thereafter revise, as



1 appropriate, guidance for conducting benefit and  
2 cost analyses in support of making certifications re-  
3 quired by subsection (a).

4 “(2) CONTENTS.—Guidance issued under para-  
5 graph (1), at a minimum, shall—

6 “(A) require the identification of available  
7 policy alternatives, including the alternative of  
8 not regulating and any alternatives proposed  
9 during periods for public comment;

10 “(B) provide methods for estimating the  
11 incremental benefits and costs associated with  
12 plausible alternatives, including the use of  
13 quantitative and qualitative measures;

14 “(C) require an estimate of the nature and  
15 extent of the incremental risk avoided by the  
16 standard, effluent limitation, or other regu-  
17 latory requirement, including a statement that  
18 places in context the nature and magnitude of  
19 the estimated risk reduction; and

20 “(D) require an estimate of the total so-  
21 cial, environmental, and economic costs of im-  
22 plementing the standard, effluent limitation, or  
23 other regulatory requirement.

24 “(c) EXEMPTIONS.—The following shall not be sub-  
25 ject to the requirements of this section:

1           “(1) The issuance of a permit.

2           “(2) The implementation of any purely proce-  
3           dural requirement.

4           “(3) Water quality criteria established under  
5           section 304.

6           “(4) Water quality based standards established  
7           under section 303.

8           “(d) DISCRETIONARY EXEMPTIONS.—The Adminis-  
9           trator or the Secretary, as appropriate, may exempt from  
10          this section any regulatory requirement that is likely to  
11          result in an annual increase in costs of less than  
12          \$25,000,000. Such exemptions may be made for specific  
13          regulatory requirements or classes of regulatory require-  
14          ments.

15          “(e) GENERAL RULE ON APPLICABILITY.—The re-  
16          quirements of this section shall apply to any regulatory  
17          requirement described in subsection (a)(1)(A) or guidance  
18          described in subsection (a)(1)(B) that is issued after the  
19          last day of the 1-year period beginning on the date of the  
20          enactment of this section.

21          “(f) SIGNIFICANT REGULATORY ACTIONS AND GUID-  
22          ANCE.—

23                  “(1) APPLICABILITY OF REQUIREMENTS.—In  
24          addition to the regulatory requirements and guid-

1       ance referred to in subsection (e), this section shall  
2       apply to—

3               “(A) any standard, effluent limitation, or  
4               other regulatory requirement issued under this  
5               Act during the period described in paragraph  
6               (2) which is likely to result in an annual in-  
7               crease in cost of \$100,000,000 or more; and

8               “(B) any guidance issued under this Act  
9               during the period described in paragraph (2)  
10              which, if issued as a regulatory requirement,  
11              would be likely to result in annual increase in  
12              cost of \$100,000,000 or more.

13              “(2) COVERED PERIOD.—The period described  
14              in this paragraph is the period beginning on Feb-  
15              ruary 15, 1995, and ending on the last day of the  
16              1-year period beginning on the date of the enact-  
17              ment of this Act.

18              “(3) REVIEW.—Any regulatory requirement de-  
19              scribed in paragraph (1)(A) or guidance described in  
20              paragraph (1)(B) which was issued before the date  
21              of the enactment of this section shall be reviewed  
22              and, with respect to each such requirement or guid-  
23              ance, the Administrator or the Secretary, as appro-  
24              priate, shall based on such review—

1           “(A) certify that the requirement or guid-  
2           ance meets the requirements of this section  
3           without revision; or

4           “(B) reissue the requirement or guidance,  
5           after providing notice and opportunity for pub-  
6           lic comment, with such revisions as may be nec-  
7           essary for compliance with the requirements of  
8           this section.

9           “(4) DEADLINE.—Any regulatory requirement  
10          described in paragraph (1)(A) or guidance described  
11          in paragraph (1)(B) for which the Administrator or  
12          the Secretary, as appropriate, does not issue a cer-  
13          tification or revisions under paragraph (3) on or be-  
14          fore the last day of the 18-month period beginning  
15          on the date of the enactment of this section shall  
16          cease to be effective after such last day until the  
17          date on which such certification or revisions are is-  
18          sued.

19          “(g) STUDY.—Not later than 5 years after the date  
20          of the enactment of this section, the Administrator, in con-  
21          sultation with the Administrator of the Office of Informa-  
22          tion and Regulatory Affairs, shall publish an analysis re-  
23          garding the precision and accuracy of benefit and cost es-  
24          timates prepared under this section. Such study, at a min-  
25          imum, shall—

1           “(1) compare estimates of the benefits and  
2 costs prepared under this section to actual costs and  
3 benefits achieved after implementation of regulations  
4 or other requirements;

5           “(2) examine and assess alternative analytic  
6 methods for conducting benefit and cost analysis, in-  
7 cluding health-health analysis; and

8           “(3) make recommendations for the improve-  
9 ment of benefit and cost analyses conducted under  
10 this section.”.

## 11           **TITLE IV—PERMITS AND** 12           **LICENSES**

### 13   **SEC. 401. WASTE TREATMENT SYSTEMS FOR CON-** 14           **CENTRATED ANIMAL FEEDING OPERATIONS.**

15           Section 402(a) is amended by adding the following  
16 new paragraph:

17           “(6) CONCENTRATED ANIMAL FEEDING OPER-  
18 ATIONS.—For purposes of this section, waste treat-  
19 ment systems, including retention ponds or lagoons,  
20 used to meet the requirements of this Act for con-  
21 centrated animal feeding operations, are not waters  
22 of the United States. If an existing concentrated  
23 animal feeding operation uses a natural topographic  
24 impoundment or structure on the effective date of  
25 this Act, which is not hydrologically connected to

1 any other waters of the United States, as a waste  
2 treatment system or wastewater retention facility,  
3 such system or facility is exempt from this Act.

4 **SEC. 402. PERMIT REFORM.**

5 (a) DURATION AND REOPENERS.—Section 402(b)(1)  
6 (33 U.S.C. 1342(b)(1)) is amended—

7 (1) in subparagraph (B) by striking “five” and  
8 inserting “10” and by striking “and”;

9 (2) by inserting “and” after the semicolon at  
10 the end of subparagraph (D); and

11 (3) by adding at the end the following new sub-  
12 paragraph:

13 “(E) can be modified as necessary to ad-  
14 dress a significant threat to human health and  
15 the environment;”.

16 (b) REVIEW OF EFFLUENT LIMITATIONS.—Section  
17 301(d) (33 U.S.C. 1311(d)) is amended to read as follows:

18 “(d) REVIEW OF EFFLUENT LIMITATIONS.—Any ef-  
19 fluent limitation required by subsection (b)(2) that is es-  
20 tablished in a permit under section 402 shall be reviewed  
21 at least every 10 years when the permit is reissued, and,  
22 if appropriate, revised.”.

23 (c) DISCHARGE LIMIT.—Section 402(a) (33 U.S.C.  
24 1342(a)) is further amended by adding at the end the fol-  
25 lowing:

1 “(7) QUANTITATION LEVEL.—

2 “(A) ESTABLISHMENT.—Not later than 1  
3 year after the date of the enactment of this Act,  
4 the Administrator shall establish quantitation  
5 levels for pollutants based on the lowest level at  
6 which a pollutant can be reliably quantified on  
7 an interlaboratory basis for each test method  
8 published under section 304(h).

9 “(B) PERMIT LEVELS.—Whenever a limi-  
10 tation for a permit issued under this section is  
11 set at a level below the quantitation level estab-  
12 lished for that pollutant under subparagraph  
13 (A) for the test method specified in the permit,  
14 any measurement of the pollutant greater than  
15 the limitation but less than the quantitation  
16 level shall not be considered a violation of the  
17 permit. All measurements less than the quan-  
18 titation level shall be deemed equal to zero for  
19 purposes of determining compliance with the  
20 limitation.”.

21 (d) DISCHARGES UNDER PERMIT APPLICATIONS.—

22 Section 402(k) (33 U.S.C. 1342(k)) is amended—

23 (1) in the first sentence by striking “except”  
24 and inserting “except for”;

25 (2) in the second sentence—

1 (A) by striking “Until December 31, 1974,  
2 in” and inserting “In”; and

3 (B) by striking “(1) section 301, 306, or  
4 402 of this Act, or (2)” and inserting “section  
5 402 of this Act or”; and

6 (C) by inserting before the period at the  
7 end the following: “, and provided further that  
8 if the discharge results in a violation of effluent  
9 limitations or standards promulgated under sec-  
10 tion 301, 302, 303, 304, 306, or 307 of this  
11 Act that would be applicable upon issuance of  
12 a permit such discharge shall be considered un-  
13 lawful under section 301 of this Act”; and

14 (3) by striking the last sentence..

15 **SEC. 403. REVIEW OF STATE PROGRAMS AND PERMITS.**

16 (a) REVIEW OF STATE PROGRAMS.—Section 402(c)  
17 (33 U.S.C. 1342(c)) is amended by inserting before the  
18 first sentence the following: “Upon approval of a State  
19 program under this section, the Administrator shall review  
20 administration of the program by the State once every 3  
21 years.”.

22 (b) REVIEW OF STATE PERMITS.—Section 402(d)(2)  
23 (33 U.S.C. 1342(d)(2)) is amended—

24 (1) in the first sentence by striking “as being  
25 outside the guidelines and requirements of this Act”



1 and inserting “as presenting a substantial risk to  
2 human health and the environment”; and

3 (2) in the second sentence by striking “and the  
4 effluent limitations” and all that follows before the  
5 period.

6 (c) COURT PROCEEDINGS TO PROHIBIT INTRODUC-  
7 TION OF POLLUTANTS INTO TREATMENT WORKS.—Sec-  
8 tion 402(h) (33 U.S.C. 1342(h)) is amended by inserting  
9 after “approved or where” the following: “the discharge  
10 involves a significant source of pollutants to the waters  
11 of the United States and”.

12 **SEC. 404. STATISTICAL NONCOMPLIANCE.**

13 (a) NUMBER OF EXCURSIONS.—Section 402(k) (33  
14 U.S.C. 1342(k)) is amended by inserting after the first  
15 sentence the following: “In any enforcement action or citi-  
16 zen suit under section 309 or 505 of this Act or applicable  
17 State law alleging noncompliance with a technology-based  
18 effluent limitation established pursuant to section 301, a  
19 permittee shall have an affirmative defense to such alleged  
20 noncompliance if the permittee demonstrates through ref-  
21 erence to information contained in the applicable rule-  
22 making record that the number of excursions from the  
23 technology-based effluent limitation are no greater, on an  
24 annual basis, than the number of excursions expected from  
25 the technology on which the limit is based and that the

1 discharges do not violate an applicable water-quality based  
2 limitation or standard.”.

3 (b) PRETREATMENT STANDARDS.—Section 307(d)  
4 (33 U.S.C. 1317(d)) is amended by adding at the end the  
5 following: “In any enforcement action or citizen suit under  
6 section 309 or 505 of this Act or applicable State law al-  
7 leging noncompliance with a categorical pretreatment  
8 standard or local pretreatment limit established pursuant  
9 to this section, a person who demonstrates through ref-  
10 erence to information contained in the applicable rule-  
11 making record—

12 “(1) that the number of excursions from the  
13 categorical pretreatment standard or local  
14 pretreatment limit are no greater, on an annual  
15 basis, than the number of excursions expected from  
16 the technology on which the pretreatment standard  
17 or local pretreatment limit is based, and

18 “(2) that the introduction of pollutants into a  
19 publicly owned treatment works does not cause in-  
20 terference with such works or cause a violation by  
21 such works of an applicable water-quality based limi-  
22 tation or standard,  
23 shall have an affirmative defense to such alleged non-  
24 compliance”.

1 **SEC. 405. ANTI-BACKSLIDING REQUIREMENTS.**

2 (a) DISCHARGE VOLUME.—Section 402(o)(2) (33  
3 U.S.C. 1342(o)(2)) is amended in the first sentence by  
4 inserting “the concentration or loading of” after “applica-  
5 ble to”.

6 (b) NONAPPLICABILITY TO POTWS.—Section 402(o)  
7 (33 U.S.C. 1343(o)) is amended by adding at the end the  
8 following:

9 “(4) NONAPPLICABILITY TO PUBLICLY OWNED  
10 TREATMENT WORKS.—The requirements of this sub-  
11 section shall not apply to permitted discharges from  
12 a publicly owned treatment works if the treatment  
13 works demonstrates to the satisfaction of the Ad-  
14 ministrator that—

15 “(A) the increase in pollutants is a result  
16 of conditions beyond the control of the treat-  
17 ment works (such as fluctuations in normal  
18 source water availabilities due to sustained  
19 drought conditions); and

20 “(B) effluent quality does not result in im-  
21 pairment of water quality standards established  
22 for the receiving waters.”.

23 **SEC. 406. INTAKE CREDITS.**

24 Section 402 (33 U.S.C. 1342) is further amended by  
25 inserting after subsection (k) the following:

26 “(l) INTAKE CREDITS.—

1           “(1) IN GENERAL.—Notwithstanding any provi-  
2           sion of this Act, in any effluent limitation or other  
3           limitation imposed under the permit program estab-  
4           lished by the Administrator under this section, any  
5           State permit program approved under this section  
6           (including any program for implementation under  
7           section 118(c)(2)), any standards established under  
8           section 307(a), or any program for industrial users  
9           established under section 307(b), the Administrator,  
10          as applicable, shall or the State, as applicable, may  
11          provide credits for pollutants present in or caused by  
12          intake water such that an owner or operator of a  
13          point source is not required to remove, reduce, or  
14          treat the amount of any pollutant in an effluent  
15          below the amount of such pollutant that is present  
16          in or caused by the intake water for such facility—

17                 “(A)(i) if the source of the intake water  
18                 and the receiving waters into which the effluent  
19                 is ultimately discharged are the same or are di-  
20                 rectly and proximately connected; or

21                 “(ii) if, at the time the limitation or stand-  
22                 ard is established, the level of the pollutant in  
23                 the intake water is the same as or lower than  
24                 the amount of the pollutant in the receiving wa-

1           ters, taking into account analytical variability;  
2           and

3           “(B) for conventional pollutants, to the ex-  
4           tent that the discharger demonstrates that the  
5           constituents of the conventional pollutants in  
6           the intake water are the same as or substan-  
7           tially similar to the constituents of the conven-  
8           tional pollutants in the effluent.

9           “(2)       ALLOWANCE       FOR       INCIDENTAL  
10          AMOUNTS.—In determining whether the condition  
11          set forth in paragraph (1)(A)(i) is being met, the  
12          Administrator shall or the State may, as appro-  
13          priate, make allowance for incidental amounts of in-  
14          take water from sources other than the receiving wa-  
15          ters.

16          “(3)       CREDIT FOR NONQUALIFYING POLLUT-  
17          ANTS.—The Administrator shall or a State may pro-  
18          vide point sources an appropriate credit for pollut-  
19          ants found in intake water in circumstances that do  
20          not meet the requirements of paragraph (1), includ-  
21          ing circumstances in which the source of the intake  
22          water meets the maximum contaminant levels or  
23          treatment techniques for drinking water contami-  
24          nants established pursuant to the Safe Drinking  
25          Water Act for the pollutant of concern. An appro-

1        appropriate credit for pollutants found in intake water is  
2        a credit that assures that an owner or operator of  
3        a point source is not required to remove, reduce, or  
4        treat the amount of any pollutant in an effluent  
5        below the amount of such pollutant that is present  
6        in the intake water for such facility, except to the  
7        extent that the level of such pollutant in the intake  
8        water will cause adverse water quality impact that  
9        would not otherwise occur.

10        “(4) MONITORING.—Nothing in this section  
11        precludes the Administrator or a State from requir-  
12        ing monitoring of intake water, effluent, or receiving  
13        waters to assist in the implementation of this sec-  
14        tion.”.

15        **SEC. 407. COMBINED SEWER OVERFLOWS.**

16        Section 402 (33 U.S.C. 1342) is further amended by  
17        adding at the end the following:

18        “(s) COMBINED SEWER OVERFLOWS.—

19        “(1) REQUIREMENT FOR PERMITS.—Each per-  
20        mit issued pursuant to this section for a discharge  
21        from a combined storm and sanitary sewer shall con-  
22        form with the combined sewer overflow control policy  
23        signed by the Administrator on April 11, 1994.

24        “(2) TERM OF PERMIT.—

1           “(A) COMPLIANCE DEADLINE.—Notwith-  
2 standing any compliance schedule under section  
3 301(b), or any permit limitation under section  
4 402(b)(1)(B), the Administrator (or a State  
5 with a program approved under subsection (b))  
6 may issue a permit pursuant to this section for  
7 a discharge from a combined storm and sani-  
8 tary sewer, that includes a schedule for compli-  
9 ance with a long-term control plan under the  
10 control policy referred to in paragraph (1), for  
11 a term not to exceed 15 years.

12           “(B) EXTENSION.—Notwithstanding the  
13 compliance deadline specified in subparagraph  
14 (A), the Administrator or a State with a pro-  
15 gram approved under subsection (b) shall ex-  
16 tend, on request of an owner or operator of a  
17 combined storm and sanitary sewer and subject  
18 to subparagraph (C), the period of compliance  
19 beyond the last day of the 15-year period—

20                   “(i) if the Administrator or the State  
21 determines that compliance by such last  
22 day is not within the economic capability  
23 of the owner or operator; and

24                   “(ii) if the owner or operator dem-  
25 onstrates to the satisfaction of the Admin-

1           istrator or the State reasonable further  
2           progress towards compliance with a long-  
3           term control plan under the control policy  
4           referred to in paragraph (1).

5           “(C) LIMITATIONS ON EXTENSIONS.—

6                 “(i) EXTENSION NOT APPROPRIATE.—

7           Notwithstanding subparagraph (B), the  
8           Administrator or the State need not grant  
9           an extension of the compliance deadline  
10          specified in subparagraph (A) if the Ad-  
11          ministrator or the State determines that  
12          such an extension is not appropriate.

13                 “(ii) NEW YORK-NEW JERSEY.—

14          Prior to granting an extension under sub-  
15          paragraph (B) with respect to a combined  
16          sewer overflow discharge originating in the  
17          State of New York or New Jersey and af-  
18          fecting the other of such States, the Ad-  
19          ministrator or the State from which the  
20          discharge originates, as the case may be,  
21          shall provide written notice of the proposed  
22          extension to the other State and shall not  
23          grant the extension unless the other State  
24          approves the extension or does not dis-



1           approve the extension within 90 days of re-  
2           ceiving such written notice.

3           “(3) SAVINGS CLAUSE.—Any consent decree or  
4           court order entered by a United States district  
5           court, or administrative order issued by the Admin-  
6           istrator, before the date of the enactment of this  
7           subsection establishing any deadlines, schedules, or  
8           timetables, including any interim deadlines, sched-  
9           ules, or timetables, for the evaluation, design, or  
10          construction of treatment works for control or elimi-  
11          nation of any discharge from a municipal combined  
12          storm and sanitary sewer system shall be modified  
13          upon motion or request by any party to such consent  
14          decree or court order, to extend to December 31,  
15          2009, at a minimum, any such deadlines, schedules,  
16          or timetables, including any interim deadlines,  
17          schedules, or timetables as is necessary to conform  
18          to the policy referred to in paragraph (1) or other-  
19          wise achieve the objectives of this subsection. Not-  
20          withstanding the preceding sentence, the period of  
21          compliance with respect to a discharge referred to in  
22          paragraph (2)(C)(ii) may only be extended in ac-  
23          cordance with paragraph (2)(C)(ii).”.

1 **SEC. 408. SANITARY SEWER OVERFLOWS.**

2 Section 402 (33 U.S.C. 1342) is further amended by  
3 adding at the end the following:

4 “(t) SANITARY SEWER OVERFLOWS.—

5 “(1) DEVELOPMENT OF POLICY.—Not later  
6 than 2 years after the date of the enactment of this  
7 subsection, the Administrator, in consultation with  
8 State and local governments and water authorities,  
9 shall develop and publish a national control policy  
10 for municipal separate sanitary sewer overflows. The  
11 national policy shall recognize and address regional  
12 and economic factors.

13 “(2) ISSUANCE OF PERMITS.—Each permit is-  
14 sued pursuant to this section for a discharge from  
15 a municipal separate sanitary sewer shall conform  
16 with the policy developed under paragraph (1).

17 “(3) COMPLIANCE DEADLINE.—Notwithstand-  
18 ing any compliance schedule under section 301(b),  
19 or any permit limitation under subsection (b)(1)(B),  
20 the Administrator or a State with a program ap-  
21 proved under subsection (b) may issue a permit pur-  
22 suant to this section for a discharge from a municip-  
23 al separate sanitary sewer due to stormwater  
24 inflows or infiltration. The permit shall include at a  
25 minimum a schedule for compliance with a long-term

1 control plan under the policy developed under para-  
2 graph (1), for a term not to exceed 15 years.

3 “(4) EXTENSION.—Notwithstanding the compli-  
4 ance deadline specified in paragraph (3), the Admin-  
5 istrator or a State with a program approved under  
6 subsection (b) shall extend, on request of an owner  
7 or operator of a municipal separate sanitary sewer,  
8 the period of compliance beyond the last day of such  
9 15-year period if the Administrator or the State de-  
10 termines that compliance by such last day is not  
11 within the economic capability of the owner or oper-  
12 ator, unless the Administrator or the State deter-  
13 mines that the extension is not appropriate.

14 “(5) EFFECT ON OTHER ACTIONS.—Before the  
15 date of publication of the policy under paragraph  
16 (1), the Administrator or Attorney General shall not  
17 initiate any administrative or judicial civil penalty  
18 action in response to a municipal separate sanitary  
19 sewer overflow due to stormwater inflows or infiltra-  
20 tion.

21 “(6) SAVINGS CLAUSE.—Any consent decree or  
22 court order entered by a United States district  
23 court, or administrative order issued by the Admin-  
24 istrator, before the date of the enactment of this  
25 subsection establishing any deadlines, schedules, or

1 timetables, including any interim deadlines, sched-  
2 ules, or timetables, for the evaluation, design, or  
3 construction of treatment works for control or elimi-  
4 nation of any discharge from a municipal separate  
5 sanitary sewer shall be modified upon motion or re-  
6 quest by any party to such consent decree or court  
7 order, to extend to December 31, 2009, at a mini-  
8 mum, any such deadlines, schedules, or timetables,  
9 including any interim deadlines, schedules, or time-  
10 tables as is necessary to conform to the policy devel-  
11 oped under paragraph (1) or otherwise achieve the  
12 objectives of this subsection.”.

13 **SEC. 409. ABANDONED MINES.**

14 Section 402 (33 U.S.C. 1342) is further amended by  
15 inserting after subsection (o) the following:

16 “(p) PERMITS FOR REMEDIATING PARTY ON ABAN-  
17 DONED OR INACTIVE MINED LANDS.—

18 “(1) APPLICABILITY.—Subject to this sub-  
19 section, including the requirements of paragraphs  
20 (2) and (3), the Administrator, with the concurrence  
21 of the concerned State or Indian tribe, may issue a  
22 permit to a remediating party under this section for  
23 discharges associated with remediation activity at  
24 abandoned or inactive mined lands which modifies  
25 any otherwise applicable requirement of sections

1 301(b), 302, and 403, or any subsection of this sec-  
2 tion (other than this subsection).

3 “(2) APPLICATION FOR A PERMIT.—A remedi-  
4 ating party who desires to conduct remediation ac-  
5 tivities on abandoned or inactive mined lands from  
6 which there is or may be a discharge of pollutants  
7 to waters of the United States or from which there  
8 could be a significant addition of pollutants from  
9 nonpoint sources may submit an application to the  
10 Administrator. The application shall consist of a re-  
11 medi- ation plan and any other information requested  
12 by the Administrator to clarify the plan and activi-  
13 ties.

14 “(3) REMEDIATION PLAN.—The remediation  
15 plan shall include (as appropriate and applicable)  
16 the following:

17 “(A) Identification of the remediating  
18 party, including any persons cooperating with  
19 the concerned State or Indian tribe with respect  
20 to the plan, and a certification that the appli-  
21 cant is a remediating party under this section.

22 “(B) Identification of the abandoned or in-  
23 active mined lands addressed by the plan.

1           “(C) Identification of the waters of the  
2 United States impacted by the abandoned or in-  
3 active mined lands.

4           “(D) A description of the physical condi-  
5 tions at the abandoned or inactive mined lands  
6 that are causing adverse water quality impacts.

7           “(E) A description of practices, including  
8 system design and construction plans and oper-  
9 ation and maintenance plans, proposed to re-  
10 duce, control, mitigate, or eliminate the adverse  
11 water quality impacts and a schedule for imple-  
12 menting such practices and, if it is an existing  
13 remediation project, a description of practices  
14 proposed to improve the project, if any.

15           “(F) An analysis demonstrating that the  
16 identified practices are expected to result in a  
17 water quality improvement for the identified  
18 waters.

19           “(G) A description of monitoring or other  
20 assessment to be undertaken to evaluate the  
21 success of the practices during and after imple-  
22 mentation, including an assessment of baseline  
23 conditions.

1           “(H) A schedule for periodic reporting on  
2 progress in implementation of major elements  
3 of the plan.

4           “(I) A budget and identified funding to  
5 support the activities described in the plan.

6           “(J) Remediation goals and objectives.

7           “(K) Contingency plans.

8           “(L) A description of the applicant’s legal  
9 right to enter and conduct activities.

10          “(M) The signature of the applicant.

11          “(N) Identification of the pollutant or pol-  
12 lutants to be addressed by the plan.

13          “(4) PERMITS.—

14                 “(A) CONTENTS.—Permits issued by the  
15 Administrator pursuant to this subsection  
16 shall—

17                         “(i) provide for compliance with and  
18 implementation of a remediation plan  
19 which, following issuance of the permit,  
20 may be modified by the applicant after  
21 providing notification to and opportunity  
22 for review by the Administrator;

23                         “(ii) require that any modification of  
24 the plan be reflected in a modified permit;

1           “(iii) require that if, at any time after  
2 notice to the remediating party and oppor-  
3 tunity for comment by the remediating  
4 party, the Administrator determines that  
5 the remediating party is not implementing  
6 the approved remediation plan in substan-  
7 tial compliance with its terms, the Admin-  
8 istrator shall notify the remediating party  
9 of the determination together with a list  
10 specifying the concerns of the Adminis-  
11 trator;

12           “(iv) provide that, if the identified  
13 concerns are not resolved or a compliance  
14 plan submitted within 90 days of the date  
15 of the notification, the Administrator may  
16 take action under section 309 of this Act;

17           “(v) provide that clauses (iii) and (iv)  
18 not apply in the case of any action under  
19 section 309 to address violations involving  
20 gross negligence (including reckless, willful,  
21 or wanton misconduct) or intentional mis-  
22 conduct by the remediating party or any  
23 other person;

24           “(vi) not require compliance with any  
25 limitation issued under sections 301(b),



1           302, and 403 or any requirement estab-  
2           lished by the Administrator under any sub-  
3           section of this section (other than this sub-  
4           section); and

5           “(vii) provide for termination of cov-  
6           erage under the permit without the remedi-  
7           ating party being subject to enforcement  
8           under sections 309 and 505 of this Act for  
9           any remaining discharges—

10           “(I) after implementation of the  
11           remediation plan;

12           “(II) if a party obtains a permit  
13           to mine the site; or

14           “(III) upon a demonstration by  
15           the remediating party that the surface  
16           water quality conditions due to reme-  
17           diation activities at the site, taken as  
18           a whole, are equal to or superior to  
19           the surface water qualities that ex-  
20           isted prior to initiation of remediation.

21           “(B) LIMITATIONS.—The Administrator  
22           shall only issue a permit under this section,  
23           consistent with the provisions of this subsection,  
24           to a remediating party for discharges associated  
25           with remediation action at abandoned or inac-

1           tive mined lands if the remediation plan dem-  
2           onstrates with reasonable certainty that the ac-  
3           tions will result in an improvement in water  
4           quality.

5           “(C) PUBLIC PARTICIPATION.—The Ad-  
6           ministrators may only issue a permit or modify  
7           a permit under this section after complying  
8           with subsection (b)(3).

9           “(D) EFFECT OF FAILURE TO COMPLY  
10          WITH PERMIT.—Failure to comply with terms  
11          of a permit issued pursuant to this subsection  
12          shall not be deemed to be a violation of an ef-  
13          fluent standard or limitation issued under this  
14          Act.

15          “(E) LIMITATIONS ON STATUTORY CON-  
16          STRUCTION.—This subsection shall not be con-  
17          strued—

18                 “(i) to limit or otherwise affect the  
19                 Administrator’s powers under section 504;  
20                 or

21                 “(ii) to preclude actions pursuant to  
22                 section 309 or 505 for any violations of  
23                 sections 301(a), 302, 402, and 403 that  
24                 may have existed for the abandoned or in-  
25                 active mined land prior to initiation of re-

1 mediation covered by a permit issued  
2 under this subsection, unless such permit  
3 covers remediation activities implemented  
4 by the permit holder prior to issuance of  
5 the permit.

6 “(F) DEEMED APPROVAL OF COMPLIANCE  
7 PLANS.—A compliance plan submitted under  
8 subparagraph (A)(iv) shall be deemed to be ap-  
9 proved on the 90th day following the date of  
10 such submission, unless the Administrator noti-  
11 fies the remediating party before such 90th day  
12 that the plan has been disapproved.

13 “(5) DEFINITIONS.—In this subsection the fol-  
14 lowing definitions apply:

15 “(A) REMEDIATING PARTY.—The term ‘re-  
16 mediating party’ means—

17 “(i) the United States (on non-Fed-  
18 eral lands), a State or an Indian tribe or  
19 officers, employees, or contractors thereof;  
20 and

21 “(ii) any person acting in cooperation  
22 with a State or Indian tribe, including a  
23 government agency that owns abandoned  
24 or inactive mined lands for the purpose of  
25 conducting remediation of the mined lands

1           or that is engaging in remediation activi-  
2           ties incidental to the ownership of the  
3           lands.

4           Such term does not include any person who, be-  
5           fore or following issuance of a permit under this  
6           section, directly benefited from or participated  
7           in any mining operation (including exploration)  
8           associated with the abandoned or inactive  
9           mined lands.

10           “(B) ABANDONED OR INACTIVE MINED  
11           LANDS.—The term ‘abandoned or inactive  
12           mined lands’ means lands that were formerly  
13           mined and are neither actively mined nor in  
14           temporary shutdown at the time of submission  
15           of the remediation plan and issuance of a per-  
16           mit under this subsection.

17           “(C) MINED LANDS.—The term ‘mined  
18           lands’ means the surface or subsurface of an  
19           area where mining operations, including explo-  
20           ration, extraction, processing, and beneficiation,  
21           have been conducted. Such term includes pri-  
22           vate ways and roads appurtenant to such area,  
23           land excavations, underground mine portals,  
24           adits, and surface expressions associated with  
25           underground workings, such as glory holes and

1           subsidence features, mining waste, smelting  
2           sites associated with other mined lands, and  
3           areas where structures, facilities, equipment,  
4           machines, tools, or other material or property  
5           which result from or have been used in the min-  
6           ing operation are located.

7           “(6) REGULATIONS.—The Administrator may  
8           issue regulations establishing more specific require-  
9           ments that the Administrator determines would fa-  
10          cilitate implementation of this subsection. Before is-  
11          suanance of such regulations, the Administrator may  
12          establish, on a case-by-case basis after notice and  
13          opportunity for public comment as provided by sub-  
14          section (b)(3), more specific requirements that the  
15          Administrator determines would facilitate implemen-  
16          tation of this subsection in an individual permit is-  
17          sued to the remediating party.”.

18 **SEC. 410. BENEFICIAL USE OF BIOSOLIDS.**

19          (a) REFERENCES.—Section 405(a) (33 U.S.C.  
20 1345(a)) is amended by inserting “(also referred to as  
21 ‘biosolids’)” after “sewage sludge” the first place it ap-  
22 pears.

23          (b) APPROVAL OF STATE PROGRAMS.—Section  
24 405(f) (33 U.S.C. 1345(f)) is amended by adding at the  
25 end the following:

1           “(3) APPROVAL OF STATE PROGRAMS.—Not-  
2           withstanding any other provision of this Act, the Ad-  
3           ministrator shall approve for purposes of this sub-  
4           section State programs that meet the standards for  
5           final use or disposal of sewage sludge established by  
6           the Administrator pursuant to subsection (d).”.

7           (c) STUDIES AND PROJECTS.—Section 405(g) (33  
8           U.S.C. 1345(g)) is amended—

9           (1) in the first sentence of paragraph (1) by in-  
10          serting “building materials,” after “agricultural and  
11          horticultural uses,”;

12          (2) in paragraph (1) by adding at the end the  
13          following: “Not later than January 1, 1997, and  
14          after providing notice and opportunity for public  
15          comment, the Administrator shall issue guidance on  
16          the beneficial use of sewage sludge.”; and

17          (3) in paragraph (2) by striking “September  
18          30, 1986,” and inserting “September 30, 1995,”.

19       **SEC. 411. WASTE TREATMENT SYSTEMS DEFINED.**

20          Title IV (33 U.S.C. 1341–1345) is further amended  
21          by adding at the end the following:

22       **“SEC. 406. WASTE TREATMENT SYSTEMS DEFINED.**

23          “(a) ISSUANCE OF REGULATIONS.—Not later than 1  
24          year of the date of the enactment of this section, the Ad-

1 administrator, after consultation with State officials, shall  
2 issue a regulation defining 'waste treatment systems'.

3 “(b) INCLUSION OF AREAS.—

4 “(1) AREAS WHICH MAY BE INCLUDED.—In de-  
5 fining the term 'waste treatment systems' under  
6 subsection (a), the Administrator may include areas  
7 used for the treatment of wastes if the Adminis-  
8 trator determines that such inclusion will not inter-  
9 fere with the goals of this Act.

10 “(2) AREAS WHICH SHALL BE INCLUDED.—In  
11 defining the term 'waste treatment systems' under  
12 subsection (a), the Administrator shall include, at a  
13 minimum, areas used for detention, retention, treat-  
14 ment, settling, conveyance, or evaporation of  
15 wastewater, stormwater, or cooling water unless—

16 “(A) the area was created in or resulted  
17 from the impoundment or other modification of  
18 navigable waters and construction of the area  
19 commenced after the date of the enactment of  
20 this section;

21 “(B) on or after February 15, 1995, the  
22 owner or operator allows the area to be used by  
23 interstate or foreign travelers for recreational  
24 purposes; or

1           “(C) on or after February 15, 1995, the  
2           owner or operator allows the taking of fish or  
3           shellfish from the area for sale in interstate or  
4           foreign commerce.

5           “(c) INTERIM PERIOD.—Before the date of issuance  
6 of regulations under subsection (a), the Administrator or  
7 the State (in the case of a State with an approved permit  
8 program under section 402) shall not require a new permit  
9 under section 402 or section 404 for any discharge into  
10 any area used for detention, retention, treatment, settling,  
11 conveyance, or evaporation of wastewater, stormwater, or  
12 cooling water unless the area is an area described in sub-  
13 section (b)(2)(A), (b)(2)(B), or (b)(2)(C).

14           “(d) SAVINGS CLAUSE.—Any area which the Admin-  
15 istrator or the State (in the case of a State with an ap-  
16 proved permit program under section 402) determined, be-  
17 fore February 15, 1995, is a water of the United States  
18 and for which, pursuant to such determination, the Ad-  
19 ministrator or State issued, before February 15, 1995, a  
20 permit under section 402 for discharges into such area  
21 shall remain a water of the United States.

22           “(e) REGULATION OF OTHER AREAS.—With respect  
23 to areas constructed for detention, retention, treatment,  
24 settling, conveyance, or evaporation of wastewater,  
25 stormwater, or cooling water that are not waste treatment



1 systems as defined by the Administrator pursuant to this  
2 section and that the Administrator determines are navi-  
3 gable waters under this Act, the Administrator or the  
4 States, in establishing standards pursuant to section  
5 303(c) of this Act or implementing other requirements of  
6 this Act, shall give due consideration to the uses for which  
7 such areas were designed and constructed, and need not  
8 establish standards or other requirements that will impede  
9 such uses.”.

10 **SEC. 412. THERMAL DISCHARGES.**

11 A municipal utility that before the date of the enact-  
12 ment of this section has been issued a permit under sec-  
13 tion 402 of the Federal Water Pollution Control Act for  
14 discharges into the Upper Greater Miami River, Ohio,  
15 shall not be required under such Act to construct a cooling  
16 tower or operate under a thermal management plan un-  
17 less—

18 (1) the Administrator or the State of Ohio de-  
19 termines based on scientific evidence that such dis-  
20 charges result in harm to aquatic life; or

21 (2) the municipal utility has applied for and  
22 been denied a thermal discharge variance under sec-  
23 tion 316(a) of such Act.

# 1 **TITLE V—GENERAL PROVISIONS**

## 2 **SEC. 501. CONSULTATION WITH STATES.**

3 Section 501 (33 U.S.C. 1361) is amended by adding  
4 at the end the following new subsection:

5 “(g) CONSULTATION WITH STATES.—

6 “(1) IN GENERAL.—The Administrator shall  
7 consult with and substantially involve State govern-  
8 ments and their representative organizations and, to  
9 the extent that they participate in the administra-  
10 tion of this Act, tribal and local governments, in the  
11 Environmental Protection Agency’s decisionmaking,  
12 priority setting, policy and guidance development,  
13 and implementation under this Act.

14 “(2) INAPPLICABILITY OF FEDERAL ADVISORY  
15 COMMITTEE ACT.—The Federal Advisory Committee  
16 Act (5 U.S.C. App.) shall not apply to meetings held  
17 to carry out paragraph (1)—

18 “(A) if such meetings are held exclusively  
19 between Federal officials and elected officers of  
20 State, local, and tribal governments (or their  
21 designated employees with authority to act on  
22 their behalf) acting in their official capacities;  
23 and

24 “(B) if such meetings are solely for the  
25 purposes of exchanging views, information, or

1           advice relating to the management or imple-  
2           mentation of this Act.

3           “(3) IMPLEMENTING GUIDELINES.—No later  
4           than 6 months after the date of the enactment of  
5           this paragraph, the Administrator shall issue guide-  
6           lines for appropriate implementation of this sub-  
7           section consistent with applicable laws and regula-  
8           tions.”.

9   **SEC. 502. NAVIGABLE WATERS DEFINED.**

10          Section 502(7) (33 U.S.C. 1362(7)) is amended by  
11          adding at the end the following: “Such term does not in-  
12          clude ‘waste treatment systems’, as defined under section  
13          406.”.

14   **SEC. 503. CAFO DEFINITION CLARIFICATION.**

15          Section 502(14) (33 U.S.C. 1362(14)) is further  
16          amended—

17                 (1) by inserting “(other than an intermittent  
18                 nonproducing livestock operation such as a stock-  
19                 yard or a holding and sorting facility)” after “feed-  
20                 ing operation”; and

21                 (2) by adding at the end the following: “The  
22                 term does include an intermittent nonproducing live-  
23                 stock operation if the average number of animal  
24                 units that are fed or maintained in any 90-day pe-  
25                 riod exceeds the number of animal units determined

1 by the Administrator or the State (in the case of a  
2 State with an approved permit program under sec-  
3 tion 402) to constitute a concentrated animal feed-  
4 ing operation or if the operation is designated by the  
5 Administrator or State as a significant contributor  
6 of pollution.”.

7 **SEC. 504. PUBLICLY OWNED TREATMENT WORKS DEFINED.**

8 Section 502 (33 U.S.C. 1362) is further amended by  
9 adding at the end the following:

10 “(27) The term ‘publicly owned treatment works’  
11 means a treatment works, as defined in section 212, lo-  
12 cated at other than an industrial facility, which is designed  
13 and constructed principally, as determined by the Admin-  
14 istrator, to treat domestic sewage or a mixture of domestic  
15 sewage and industrial wastes of a liquid nature. In the  
16 case of such a facility that is privately owned, such term  
17 includes only those facilities that, with respect to such in-  
18 dustrial wastes, are carrying out a pretreatment program  
19 meeting all the requirements established under section  
20 307 and paragraphs (8) and (9) of section 402(b) for  
21 pretreatment programs (whether or not the treatment  
22 works would be required to implement a pretreatment pro-  
23 gram pursuant to such sections).”.

1 **SEC. 505. STATE WATER QUANTITY RIGHTS.**

2 (a) POLICY.—Section 101(g) (33 U.S.C. 1251(g)) is  
3 amended by inserting before the period at the end of the  
4 last sentence “and in accordance with section 510(b) of  
5 this Act”.

6 (b) STATE AUTHORITY.—Section 510 (33 U.S.C.  
7 1370) is amended—

8 (1) by striking the section heading and “SEC.  
9 510. Except” and inserting the following:

10 **“SEC. 510. STATE AUTHORITY.**

11 “(a) IN GENERAL.—Except”; and

12 (2) by adding at the end the following new sub-  
13 section:

14 “(b) WATER RIGHTS.—Nothing in this Act shall be  
15 construed to supersede, abrogate, or otherwise impair any  
16 right or authority of a State to allocate quantities of water  
17 (including boundary waters). Nothing in this Act shall be  
18 implemented, enforced, or construed to allow any officer  
19 or agency of the United States to utilize directly or indi-  
20 rectly the authorities established under this Act to impose  
21 any requirement not imposed by the State which would  
22 supersede, abrogate, or otherwise impair rights to the use  
23 of water resources allocated under State law, interstate  
24 water compact, or Supreme Court decree, or held by the  
25 United States for use by a State, its political subdivisions,  
26 or its citizens. No water rights arise in the United States

1 or any other person under the provisions of this Act. This  
2 subsection shall not be construed as limiting any State's  
3 authority under section 401 of this Act, as excusing any  
4 person from obtaining a permit under section 402 or 404  
5 of this Act, or as excusing any obligation to comply with  
6 requirements established by a State to implement section  
7 319.''.

8 **SEC. 506. IMPLEMENTATION OF WATER POLLUTION LAWS**  
9 **WITH RESPECT TO NONPETROLEUM OIL**  
10 **PRODUCTS AND OIL SUBSTITUTES.**

11 (a) DIFFERENTIATION AMONG PETROLEUM AND  
12 NONPETROLEUM PRODUCTS.—

13 (1) IN GENERAL.—In issuing or enforcing a  
14 regulation, an interpretation, or a guideline relating  
15 to a fat, oil, or grease under the Oil Pollution Act  
16 of 1990 or the Federal Water Pollution Control Act,  
17 the head of a Federal agency shall—

18 (A) differentiate between and establish  
19 separate classes for petroleum and  
20 nonpetroleum oil products and oil substitutes,  
21 including animal fats, vegetable oils, and sili-  
22 cone fluids; and

23 (B) apply different standards and report-  
24 ing requirements (including reporting require-  
25 ments based on quantitative amounts) to dif-

1           ferent classes of petroleum and nonpetroleum  
2           oil products and oil substitutes as provided in  
3           paragraph (2).

4           (2) CONSIDERATIONS.—In differentiating be-  
5           tween the classes of petroleum products and  
6           nonpetroleum oil products and oil substitutes, the  
7           head of the Federal agency shall consider differences  
8           in physical, chemical, biological, and other prop-  
9           erties, and in the environmental effects, of the class-  
10          es.

11          (b) DEFINITIONS.—In this section, the following defi-  
12          nitions apply:

13           (1) ANIMAL FAT.—The term “animal fat”  
14           means each type of animal fat, oil, or grease, includ-  
15           ing fat, oil, or grease from fish or a marine mammal  
16           and any fat, oil, or grease referred to in section  
17           61(a)(2) of title 13, United States Code.

18           (2) VEGETABLE OIL.—The term “vegetable oil”  
19           means each type of vegetable oil, including vegetable  
20           oil from a seed, nut, or kernel and any vegetable oil  
21           referred to in section 61(a)(1) of title 13, United  
22           States Code.

23 **SEC. 507. DISPUTE RESOLUTION.**

24          (a) IN GENERAL.—Section 401 of the Federal Water  
25          Pollution Control Act does not apply with respect to the

1 licensing of a hydroelectric project under part I of the  
2 Federal Power Act if the relevant Federal agency makes  
3 the determination referred to in subsection (b) in accord-  
4 ance with the mechanism described in subsection (c).

5 (b) DETERMINATION.—The determination referred to  
6 in subsection (a) is a specific determination that a denial,  
7 condition, or requirement of a certification under section  
8 401 of the Federal Water Pollution Control Act for the  
9 project is inconsistent with the purposes and requirements  
10 of part I of the Federal Power Act.

11 (c) MECHANISM.—The dispute resolution mechanism  
12 for purposes of subsection (a) shall be a mechanism estab-  
13 lished by the relevant Federal agency, in consultation with  
14 the Administrator and the States, for resolving any con-  
15 flicts or unreasonable consequences resulting from actions  
16 taken under section 401 by a State, an interstate water  
17 pollution control agency, or the Administrator relating to  
18 the issuance of a license (or to activities under such li-  
19 cense) for a hydroelectric project under part I of the Fed-  
20 eral Power Act. Such mechanism shall include, at a mini-  
21 mum, a process whereby—

22 (1) the relevant Federal agency, in coordination  
23 with the State, the interstate agency or the Adminis-  
24 trator (as the case may be) may determine whether  
25 any denial, condition, or requirement under section



1 401 of the Federal Water Pollution Control Act re-  
2 lating to the issuance of such license or to activities  
3 under such license is inconsistent with the purposes  
4 and requirements of part I of the Federal Power  
5 Act;

6 (2) such denial, condition, or requirement shall  
7 be presumed to be consistent with the purposes and  
8 requirements of part I of the Federal Power Act if  
9 based on temperature, turbidity, or other objective  
10 water quality criteria regulating discharges of pollut-  
11 ants; and

12 (3) any denial, condition, or requirement not  
13 based on such criteria shall be presumed to be con-  
14 sistent with the purposes and requirements of part  
15 I of the Federal Power Act unless the relevant Fed-  
16 eral agency, after attempting to resolve any incon-  
17 sistency, makes a specific determination under sub-  
18 section (b) and publishes such determination, to-  
19 gether with the basis for such determination, in the  
20 license or other appropriate order.

21 **SEC. 508. NEEDS ESTIMATE.**

22 Section 516(b)(1) (33 U.S.C. 1375(b)(1)) is amend-  
23 ed—

24 (1) in the first sentence by striking “biennially  
25 revised” and inserting “quadrennially revised”; and

1           (2) in the second sentence by striking “Feb-  
2           ruary 10 of each odd-numbered year” and inserting  
3           “December 31, 1997, and December 31 of every 4th  
4           calendar year thereafter”.

5 **SEC. 509. PROGRAM AUTHORIZATIONS.**

6           (a) LIMIT ON AUTHORIZATIONS.—No funds are au-  
7           thorized for any fiscal year after fiscal year 2000 for car-  
8           rying out the programs and activities for which funds are  
9           authorized by this Act, including amendments made by  
10          this Act.

11          (b) GENERAL PROGRAM AUTHORIZATIONS.—Section  
12          517 (33 U.S.C. 1376) is amended—

13                 (1) by striking “and” before “\$135,000,000”;  
14                 and

15                 (2) by inserting before the period at the end the  
16                 following: “, and such sums as may be necessary for  
17                 each of fiscal years 1991 through 2000”.

18 **SEC. 510. INDIAN TRIBES.**

19           (a) COOPERATIVE AGREEMENTS.—Section 518(d)  
20           (33 U.S.C. 1377(d)) is amended by adding at the end the  
21           following: “In exercising the review and approval provided  
22           in this paragraph, the Administrator shall respect the  
23           terms of any cooperative agreement that addresses the au-  
24           thority or responsibility of a State or Indian tribe to ad-  
25           minister the requirements of this Act within the exterior

1 boundaries of a Federal Indian reservation, so long as that  
2 agreement otherwise provides for the adequate administra-  
3 tion of this Act.”.

4 (b) TREATMENT AS STATES.—Section 518(e) (33  
5 U.S.C. 1377(e)) is amended—

6 (1) in paragraph (2)—

7 (A) by striking “water resources which  
8 are” and inserting “water resources within the  
9 exterior boundaries of a Federal Indian reserva-  
10 tion which are on or appurtenant to lands”;

11 (B) by inserting “or” after “Indians,”;

12 (C) by striking “member of an Indian  
13 tribe” and inserting “member of the reserva-  
14 tion’s governing Indian tribe”;

15 (D) by striking “, or otherwise within the  
16 borders of an Indian reservation”; and

17 (E) by striking “and” at the end;

18 (2) by striking the period at the end of para-  
19 graph (3) and inserting “; and”; and

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

21 “(4) the Administrator’s action does not au-  
22 thorize the Indian tribe to regulate lands owned in  
23 whole or in part by nonmembers of the tribe or the  
24 use of water resources on or appurtenant to such  
25 lands.”.

1 (c) DISPUTE RESOLUTION.—Section 518 is amend-  
2 ed—

3 (1) by redesignating subsection (h) as sub-  
4 section (j); and

5 (2) by inserting after subsection (g) the follow-  
6 ing new subsection:

7 “(h) DISPUTE RESOLUTION.—The Administrator  
8 shall promulgate, in consultation with States and Indian  
9 tribes, regulations which provide for the resolution of any  
10 unreasonable consequences that may arise as a result of  
11 differing water quality standards that may be set by  
12 States and Indian tribes located on common bodies of  
13 water. Such mechanism shall provide, in a manner consist-  
14 ent with the objectives of this Act, that persons who are  
15 affected by differing tribal or State water quality permit  
16 requirements have standing to utilize the dispute resolu-  
17 tion process, and for the explicit consideration of relevant  
18 factors, including the effects of differing water quality per-  
19 mit requirements on upstream and downstream discharg-  
20 ers, economic impacts, and present and historical uses and  
21 quality of the waters subject to such standards.”.

22 (d) PETITIONS FOR REVIEW.—Section 518 (33  
23 U.S.C. 1377) is amended by inserting after subsection (h)  
24 (as added by subsection (b) of this section) the following:

1       “(i) DISTRICT COURTS; PETITION FOR REVIEW;  
2 STANDARD OF REVIEW.—Notwithstanding the provisions  
3 of section 509, the United States district courts shall have  
4 jurisdiction over actions brought to review any determina-  
5 tion of the Administrator under section 518. Such an ac-  
6 tion may be brought by a State or an Indian tribe and  
7 shall be filed with the court within the 90-day period be-  
8 ginning on the date of the determination of the Adminis-  
9 trator is made. In any such action, the district court shall  
10 review the Administrator’s determination de novo.”.

11       (e) DEFINITIONS.—Section 518(j)(1), as redesis-  
12 gnated by subsection (b) of this section, is amended by in-  
13 serting before the semicolon at the end the following: “,  
14 and, in the State of Oklahoma, such term includes lands  
15 held in trust by the United States for the benefit of an  
16 Indian tribe or an individual member of an Indian tribe,  
17 lands which are subject to Federal restrictions against  
18 alienation, and lands which are located within a dependent  
19 Indian community, as defined in section 1151 of title 18,  
20 United States Code”.

21       (f) RESERVATION OF FUNDS.—Section 518(c) (33  
22 U.S.C. 1377(c)) is amended in the first sentence—

23               (1) by striking “beginning after September 30,  
24               1986,”;

1           (2) by striking “section 205(e)” and inserting  
2           “section 604(a)”;  
3           (3) by striking “one-half of”; and  
4           (4) by striking “section 207” and inserting  
5           “sections 607 and 608”.

6 **SEC. 511. FOOD PROCESSING AND FOOD SAFETY.**

7           Title V (33 U.S.C. 1361–1377) is amended by redес-  
8 ignating section 519 as section 522 and by inserting after  
9 section 518 the following:

10 **“SEC. 519. FOOD PROCESSING AND FOOD SAFETY.**

11           “In developing any effluent guideline under section  
12 304(b), pretreatment standard under section 307(b), or  
13 new source performance standard under section 306 that  
14 is applicable to the food processing industry, the Adminis-  
15 trator shall consult with and consider the recommenda-  
16 tions of the Food and Drug Administration, Department  
17 of Health and Human Services, Department of Agri-  
18 culture, and Department of Commerce. The recommenda-  
19 tions of such departments and agencies and a description  
20 of the Administrator’s response to those recommendations  
21 shall be made part of the rulemaking record for the devel-  
22 opment of such guidelines and standards. The Administra-  
23 tor’s response shall include an explanation with respect to  
24 food safety, including a discussion of relative risks, of any

1 departure from a recommendation by any such depart-  
2 ment or agency.”.

3 **SEC. 512. AUDIT DISPUTE RESOLUTION.**

4 Title V (33 U.S.C. 1361–1377) is further amended  
5 by inserting before section 522, as redesignated by section  
6 511 of this Act, the following:

7 **“SEC. 520. AUDIT DISPUTE RESOLUTION.**

8 “(a) ESTABLISHMENT OF BOARD.—The Adminis-  
9 trator shall establish an independent Board of Audit Ap-  
10 peals (hereinafter in this section referred to as the  
11 ‘Board’) in accordance with the requirements of this sec-  
12 tion.

13 “(b) DUTIES.—The Board shall have the authority  
14 to review and decide contested audit determinations relat-  
15 ed to grant and contract awards under this Act. In carry-  
16 ing out such duties, the Board shall consider only those  
17 regulations, guidance, policies, facts, and circumstances in  
18 effect at the time of the grant or contract award.

19 “(c) PRIOR ELIGIBILITY DECISIONS.—The Board  
20 shall not reverse project cost eligibility determinations that  
21 are supported by an decision document of the Environ-  
22 mental Protection Agency, including grant or contract ap-  
23 provals, plans and specifications approval forms, grant or  
24 contract payments, change order approval forms, or simi-  
25 lar documents approving project cost eligibility, except

1 upon a showing that such decision was arbitrary, capri-  
2 cious, or an abuse of law in effect at the time of such  
3 decision.

4 “(d) MEMBERSHIP.—

5 “(1) APPOINTMENT.—The Board shall be com-  
6 posed of 7 members to be appointed by the Adminis-  
7 trator not later than 90 days after the date of the  
8 enactment of this section.

9 “(2) TERMS.—Each member shall be appointed  
10 for a term of 3 years.

11 “(3) QUALIFICATIONS.—The Administrator  
12 shall appoint as members of the Board individuals  
13 who are specially qualified to serve on the Board by  
14 virtue of their expertise in grant and contracting  
15 procedures. The Administrator shall make every ef-  
16 fort to ensure that individuals appointed as members  
17 of the Board are free from conflicts of interest in  
18 carrying out the duties of the Board.

19 “(e) BASIC PAY AND TRAVEL EXPENSES.—

20 “(1) RATES OF PAY.—Except as provided in  
21 paragraph (2), members shall each be paid at a rate  
22 of basic pay, to be determined by the Administrator,  
23 for each day (including travel time) during which  
24 they are engaged in the actual performance of duties  
25 vested in the Board.



1           “(2) PROHIBITION OF COMPENSATION OF FED-  
2           ERAL EMPLOYEES.—Members of the Board who are  
3           full-time officers or employees of the United States  
4           may not receive additional pay, allowances, or bene-  
5           fits by reason of their service on the Board.

6           “(3) TRAVEL EXPENSES.—Each member shall  
7           receive travel expenses, including per diem in lieu of  
8           subsistence, in accordance with sections 5702 and  
9           5703 of title 5, United States Code.

10          “(f) ADMINISTRATIVE SUPPORT SERVICES.—Upon  
11          the request of the Board, the Administrator shall provide  
12          to the Board the administrative support services necessary  
13          for the Board to carry out its responsibilities under this  
14          section.

15          “(g) DISPUTES ELIGIBLE FOR REVIEW.—The au-  
16          thority of the Board under this section shall extend to any  
17          contested audit determination that on the date of the en-  
18          actment of this section has yet to be formally concluded  
19          and accepted by either the grantee or the Administrator.”.

20          **SEC. 513. AMERICAN-MADE EQUIPMENT AND PRODUCTS.**

21          Title V (33 U.S.C. 1361-1377) is further amended  
22          by inserting before section 522, as redesignated by section  
23          511 of this Act, the following:

1 **“SEC. 521. AMERICAN-MADE EQUIPMENT AND PRODUCTS.**

2       “(a) PURCHASE OF AMERICAN-MADE EQUIPMENT  
3 AND PRODUCTS.—It is the sense of Congress that, to the  
4 greatest extent practicable, all equipment and products  
5 purchased with funds made available under this Act  
6 should be American-made.

7       “(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In  
8 providing financial assistance under this Act, the Adminis-  
9 trator, to the greatest extent practicable, shall provide to  
10 each recipient of the assistance a notice describing the  
11 sense of Congress expressed by subsection (a).”.

12 **TITLE VI—STATE WATER POLLU-**  
13 **TION CONTROL REVOLVING**  
14 **FUNDS**

15 **SEC. 601. GENERAL AUTHORITY FOR CAPITALIZATION**  
16 **GRANTS.**

17       Section 601(a) (33 U.S.C. 1381(a)) is amended by  
18 striking “(1) for construction” and all that follows  
19 through the period and inserting “to accomplish the pur-  
20 poses of this Act.”.

21 **SEC. 602. CAPITALIZATION GRANT AGREEMENTS.**

22       (a) REQUIREMENTS FOR CONSTRUCTION OF TREAT-  
23 MENT WORKS.—Section 602(b)(6) (33 U.S.C.  
24 1382(b)(6)) is amended—

25               (1) by striking “before fiscal year 1995”; and

1           (2) by striking “201(b)” and all that follows  
2 through “218” and inserting “211”.

3           (b) COMPLIANCE WITH OTHER FEDERAL LAWS.—  
4 Section 602 (33 U.S.C. 1382) is amended by adding at  
5 the end the following:

6           “(c) OTHER FEDERAL LAWS.—

7           “(1) COMPLIANCE WITH OTHER FEDERAL  
8 LAWS.—If a State provides assistance from its water  
9 pollution control revolving fund established in ac-  
10 cordance with this title and in accordance with a  
11 statute, rule, executive order, or program of the  
12 State which addresses the intent of any requirement  
13 or any Federal executive order or law other than  
14 this Act, as determined by the State, the State in  
15 providing such assistance shall be treated as having  
16 met the Federal requirements.

17           “(2) LIMITATION ON APPLICABILITY OF OTHER  
18 FEDERAL LAWS.—If a State does not meet a re-  
19 quirement of a Federal executive order or law other  
20 than this Act under paragraph (1), such Federal law  
21 shall only apply to Federal funds deposited in the  
22 water pollution control revolving fund established by  
23 the State in accordance with this title the first time  
24 such funds are used to provide assistance from the  
25 revolving fund.”.

1 (c) GUIDANCE FOR SMALL SYSTEMS.—Section 602  
2 (33 U.S.C. 1382) is amended by adding at the end the  
3 following new subsection:

4 “(d) GUIDANCE FOR SMALL SYSTEMS.—

5 “(1) SIMPLIFIED PROCEDURES.—Not later than  
6 1 year after the date of the enactment of this sub-  
7 section, the Administrator shall assist the States in  
8 establishing simplified procedures for small systems  
9 to obtain assistance under this title.

10 “(2) PUBLICATION OF MANUAL.—Not later  
11 than 1 year after the date of the enactment of this  
12 subsection, and after providing notice and oppor-  
13 tunity for public comment, the Administrator shall  
14 publish a manual to assist small systems in obtain-  
15 ing assistance under this title and publish in the  
16 Federal Register notice of the availability of the  
17 manual.

18 “(3) SMALL SYSTEM DEFINED.—For purposes  
19 of this title, the term ‘small system’ means a system  
20 for which a municipality or intermunicipal, inter-  
21 state, or State agency seeks assistance under this  
22 title and which serves a population of 20,000 or  
23 less.”.

1 **SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN**  
2 **FUNDS.**

3 (a) ACTIVITIES ELIGIBLE FOR ASSISTANCE.—Sec-  
4 tion 603(c) (33 U.S.C. 1383(c)) is amended to read as  
5 follows:

6 “(c) ACTIVITIES ELIGIBLE FOR ASSISTANCE.—

7 “(1) IN GENERAL.—The amounts of funds  
8 available to each State water pollution control re-  
9 volving fund shall be used only for providing finan-  
10 cial assistance to activities which have as a principal  
11 benefit the improvement or protection of water qual-  
12 ity of navigable waters to a municipality,  
13 intermunicipal agency, interstate agency, State agen-  
14 cy, or other person. Such activities may include the  
15 following:

16 “(A) Construction of a publicly owned  
17 treatment works if the recipient of such assist-  
18 ance is a municipality.

19 “(B) Implementation of lake protection  
20 programs and projects under section 314.

21 “(C) Implementation of a management  
22 program under section 319.

23 “(D) Implementation of a conservation and  
24 management plan under section 320.

25 “(E) Implementation of a watershed man-  
26 agement plan under section 321.

1           “(F) Implementation of a stormwater  
2 management program under section 322.

3           “(G) Acquisition of property rights for the  
4 restoration or protection of publicly or privately  
5 owned riparian areas.

6           “(H) Implementation of measures to im-  
7 prove the efficiency of public water use.

8           “(I) Development and implementation of  
9 plans by a public recipient to prevent water pol-  
10 lution.

11           “(J) Acquisition of lands necessary to meet  
12 any mitigation requirements related to con-  
13 struction of a publicly owned treatment works.

14           “(2) FUND AMOUNTS.—The water pollution  
15 control revolving fund of a State shall be established,  
16 maintained, and credited with repayments, and the  
17 fund balance shall be available in perpetuity for pro-  
18 viding financial assistance described in paragraph  
19 (1). Fees charged by a State to recipients of such  
20 assistance may be deposited in the fund for the sole  
21 purpose of financing the cost of administration of  
22 this title.”.

23           (b) EXTENDED REPAYMENT PERIOD FOR DISADVAN-  
24 TAGED COMMUNITIES.—Section 603(d)(1) (33 U.S.C.  
25 1383(d)(1)) is amended—

1           (1) in subparagraph (A) by inserting after “20  
2           years” the following: “or, in the case of a disadvan-  
3           tagged community, the lesser of 40 years or the ex-  
4           pected life of the project to be financed with the pro-  
5           ceeds of the loan”; and

6           (2) in subparagraph (B) by striking “not later  
7           than 20 years after project completion” and insert-  
8           ing “upon the expiration of the term of the loan”.

9           (c) LOAN GUARANTEES FOR INNOVATIVE TECH-  
10          NOLOGY.—Section 603(d)(5) (33 U.S.C. 1383(d)(5)) is  
11          amended to read as follows:

12                 “(5) to provide loan guarantees for—

13                         “(A) similar revolving funds established by  
14                         municipalities or intermunicipal agencies; and

15                         “(B) developing and implementing innova-  
16                         tive technologies.”.

17          (d) ADMINISTRATIVE EXPENSES.—Section 603(d)(7)  
18          (33 U.S.C. 1383(d)(7)) is amended by inserting before the  
19          period at the end the following: “or \$400,000 per year  
20          or 1/2 percent per year of the current valuation of such  
21          fund, whichever is greater, plus the amount of any fees  
22          collected by the State for such purpose under subsection  
23          (c)(2)”.

1 (e) TECHNICAL AND PLANNING ASSISTANCE FOR  
2 SMALL SYSTEMS.—Section 603(d) (33 U.S.C. 1383(d)) is  
3 amended—

4 (1) by striking “and” at the end of paragraph  
5 (6);

6 (2) by striking the period at the end of para-  
7 graph (7) and inserting “; and”; and

8 (3) by adding at the end the following new  
9 paragraph:

10 “(8) to provide to small systems technical and  
11 planning assistance and assistance in financial man-  
12 agement, user fee analysis, budgeting, capital im-  
13 provement planning, facility operation and mainte-  
14 nance, repair schedules, and other activities to im-  
15 prove wastewater treatment plant operations; except  
16 that such amounts shall not exceed 2 percent of all  
17 grant awards to such fund under this title.”.

18 (f) CONSISTENCY WITH PLANNING REQUIRE-  
19 MENTS.—Section 603(f) (33 U.S.C. 1383(f)) is amend-  
20 ed—

21 (1) by striking “is consistent” and inserting “is  
22 not inconsistent”; and

23 (2) by striking “and 320” and inserting “320,  
24 321, and 322”.



1 (g) LIMITATIONS ON CONSTRUCTION ASSISTANCE.—  
2 Section 603(g) (33 U.S.C. 1383(g)) is amended to read  
3 as follows:

4 “(g) LIMITATIONS ON CONSTRUCTION ASSIST-  
5 ANCE.—The State may provide financial assistance from  
6 its water pollution control revolving fund with respect to  
7 a project for construction of a publicly owned treatment  
8 works only if—

9 “(1) such project is on the State’s priority list  
10 under section 216 of this Act without regard to the  
11 rank of such project on the State’s priority list; and

12 “(2) the recipient of such assistance is a mu-  
13 nicipality in any case in which the treatment works  
14 is privately owned.”.

15 (h) INTEREST RATES.—Section 603 is further  
16 amended by adding at the end the following:

17 “(i) INTEREST RATES.—In any case in which a State  
18 makes a loan pursuant to subsection (d)(1) to a disadvan-  
19 taged community, the State may charge a negative inter-  
20 est rate of not to exceed 2 percent to reduce the unpaid  
21 principal of the loan. The aggregate amount of all such  
22 negative interest rate loans the State makes in a fiscal  
23 year shall not exceed 20 percent of the aggregate amount  
24 of all loans made by the State from its revolving loan fund  
25 in such fiscal year.

1       “(j) DISADVANTAGED COMMUNITY DEFINED.—As  
2 used in this section, the term ‘disadvantaged community’  
3 means the service area of a publicly owned treatment  
4 works with respect to which the average annual residential  
5 sewage treatment charges for a user of the treatment  
6 works meet affordability criteria established by the State  
7 in which the treatment works is located (after providing  
8 for public review and comment) in accordance with guide-  
9 lines to be established by the Administrator, in coopera-  
10 tion with the States.”.

11       (i) SALE OF TREATMENT WORKS.—Section 603 is  
12 further amended by adding at the end the following:

13       “(k) SALE OF TREATMENT WORKS.—

14               “(1) IN GENERAL.—Notwithstanding any other  
15 provisions of this Act, any State, municipality,  
16 intermunicipality, or interstate agency may transfer  
17 by sale to a qualified private sector entity all or part  
18 of a treatment works that is owned by such agency  
19 and for which it received Federal financial assistance  
20 under this Act if the transfer price will be distrib-  
21 uted, as amounts are received, in the following  
22 order:

23                       “(A) First reimbursement of the agency of  
24 the unadjusted dollar amount of the costs of  
25 construction of the treatment works or part

1           thereof plus any transaction and fix-up costs in-  
2           curred by the agency with respect to the trans-  
3           fer less the amount of such Federal financial  
4           assistance provided with respect to such costs.

5           “(B) If proceeds from the transfer remain  
6           after such reimbursement, repayment of the  
7           Federal Government of the amount of such  
8           Federal financial assistance less the applicable  
9           share of accumulated depreciation on such  
10          treatment works (calculated using Internal Rev-  
11          enue Service accelerated depreciation schedule  
12          applicable to treatment works).

13          “(C) If any proceeds of such transfer re-  
14          main after such reimbursement and repayment,  
15          retention of the remaining proceeds by such  
16          agency.

17          “(2) RELEASE OF CONDITION.—Any require-  
18          ment imposed by regulation or policy for a showing  
19          that the treatment works are no longer needed to  
20          serve their original purpose shall not apply.

21          “(3) SELECTION OF BUYER.—A State, munici-  
22          pality, intermunicipality, or interstate agency exer-  
23          cising the authority granted by this subsection shall  
24          select a qualified private sector entity on the basis  
25          of total net cost and other appropriate criteria and

1 shall utilize such competitive bidding, direct negotia-  
2 tion, or other criteria and procedures as may be re-  
3 quired by State law.

4 “(l) PRIVATE OWNERSHIP OF TREATMENT  
5 WORKS.—

6 “(1) REGULATORY REVIEW.—The Adminis-  
7 trator shall review the law and any regulations, poli-  
8 cies, and procedures of the Environmental Protec-  
9 tion Agency affecting the construction, improvement,  
10 replacement, operation, maintenance, and transfer of  
11 ownership of current and future treatment works  
12 owned by a State, municipality, intermunicipality, or  
13 interstate agency. If permitted by law, the Adminis-  
14 trator shall modify such regulations, policies, and  
15 procedures to eliminate any obstacles to the con-  
16 struction, improvement, replacement, operation, and  
17 maintenance of such treatment works by qualified  
18 private sector entities.

19 “(2) REPORT.—Not later than 180 days after  
20 the date of enactment of this subsection, the Adminis-  
21 trator shall submit to Congress a report identifying  
22 any provisions of law that must be changed in order  
23 to eliminate any obstacles referred to in paragraph  
24 (1).

1           “(3) DEFINITION.—For purposes of this sec-  
2           tion, the term ‘qualified private sector entity’ means  
3           any nongovernmental individual, group, association,  
4           business, partnership, organization, or privately or  
5           publicly held corporation that—

6                   “(A) has sufficient experience and exper-  
7                   tise to discharge successfully the responsibilities  
8                   associated with construction, operation, and  
9                   maintenance of a treatment works and to sat-  
10                  isfy any guarantees that are agreed to in con-  
11                  nection with a transfer of treatment works  
12                  under subsection (k);

13                  “(B) has the ability to assure protection  
14                  against insolvency and interruption of services  
15                  through contractual and financial guarantees;  
16                  and

17                  “(C) with respect to subsection (k), to the  
18                  extent consistent with the North American Free  
19                  Trade Agreement and the General Agreement  
20                  on Tariffs and Trade—

21                          “(i) is majority-owned and controlled  
22                          by citizens of the United States; and

23                          “(ii) does not receive subsidies from a  
24                          foreign government.”.

1 **SEC. 604. ALLOTMENT OF FUNDS.**

2 (a) IN GENERAL.—Section 604(a) (33 U.S.C.  
3 1384(a)) is amended to read as follows:

4 “(a) FORMULA FOR FISCAL YEARS 1996–2000.—  
5 Sums authorized to be appropriated pursuant to section  
6 607 for each of fiscal years 1996, 1997, 1998, 1999, and  
7 2000 shall be allotted for such year by the Administrator  
8 not later than the 10th day which begins after the date  
9 of the enactment of the Clean Water Amendments of  
10 1995. Sums authorized for each such fiscal year shall be  
11 allotted in accordance with the following table:

<b>“States:</b>	<b>Percentage of sums authorized:</b>
Alabama .....	0.7736
Alaska .....	0.2500
Arizona .....	1.1526
Arkansas .....	0.3853
California .....	9.3957
Colorado .....	0.6964
Connecticut .....	1.3875
Delaware .....	0.2500
District of Columbia .....	0.3203
Florida .....	3.4696
Georgia .....	2.0334
Hawaii .....	0.2629
Idaho .....	0.2531
Illinois .....	5.6615
Indiana .....	3.1304
Iowa .....	0.6116
Kansas .....	0.8749
Kentucky .....	1.3662
Louisiana .....	1.0128
Maine .....	0.6742
Maryland .....	1.6701
Massachusetts .....	4.3755
Michigan .....	3.8495
Minnesota .....	1.3275
Mississippi .....	0.6406
Missouri .....	1.7167
Montana .....	0.2500
Nebraska .....	0.4008
Nevada .....	0.2500

<b>“States:</b>	<b>Percentage of sums authorized:</b>
New Hampshire .....	0.4791
New Jersey .....	4.7219
New Mexico .....	0.2500
New York .....	14.7435
North Carolina .....	2.5920
North Dakota .....	0.2500
Ohio .....	4.9828
Oklahoma .....	0.6273
Oregon .....	1.2483
Pennsylvania .....	4.2431
Rhode Island .....	0.4454
South Carolina .....	0.7480
South Dakota .....	0.2500
Tennessee .....	1.4767
Texas .....	4.6773
Utah .....	0.2937
Vermont .....	0.2722
Virginia .....	2.4794
Washington .....	2.2096
West Virginia .....	1.4346
Wisconsin .....	1.4261
Wyoming .....	0.2500
Puerto Rico .....	1.0866
Northern Marianas .....	0.0308
American Samoa .....	0.0908
Guam .....	0.0657
Palau .....	0.1295
Virgin Islands .....	0.0527.”.

1           (b) CONFORMING AMENDMENT.—Section 604(c)(2)  
2 is amended by striking “title II of this Act” and inserting  
3 “this title”.

4 **SEC. 605. AUTHORIZATION OF APPROPRIATIONS.**

5           Section 607 (33 U.S.C. 1387(a)) is amended—

6           (1) by striking “and” at the end of paragraph  
7           (4);

8           (2) by striking the period at the end of para-  
9           graph (5) and inserting a semicolon; and

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

1           “(6) such sums as may be necessary for fiscal  
2           year 1995;

3           “(7) \$2,250,000,000 for fiscal year 1996;

4           “(8) \$2,300,000,000 for fiscal year 1997;

5           “(9) \$2,300,000,000 for fiscal year 1998;

6           “(10) \$2,300,000,000 for fiscal year 1999; and

7           “(11) \$2,300,000,000 for fiscal year 2000.”.

8           **TITLE VII—MISCELLANEOUS**  
9           **PROVISIONS**

10       **SEC. 701. TECHNICAL AMENDMENTS.**

11       (a) SECTION 118.—Section 118(c)(1)(A) (33 U.S.C.  
12       1268(c)(1)(A)) is amended by striking the last comma.

13       (b) SECTION 120.—Section 120(d) (33 U.S.C.  
14       1270(d)) is amended by striking “(1)”.

15       (c) SECTION 204.—Section 204(a)(3) (33 U.S.C.  
16       1284(a)(3)) is amended by striking the final period and  
17       inserting a semicolon.

18       (d) SECTION 205.—Section 205 (33 U.S.C. 1285) is  
19       amended—

20           (1) in subsection (c)(2) by striking “and 1985”  
21           and inserting “1985, and 1986”;

22           (2) in subsection (c)(2) by striking “through  
23           1985” and inserting “through 1986”;

24           (3) in subsection (g)(1) by striking the period  
25           following “4 per centum”; and



1           (4) in subsection (m)(1)(B) by striking “this”  
2           the last place it appears and inserting “such”.

3           (e) SECTION 208.—Section 208 (33 U.S.C. 1288) is  
4 amended—

5           (1) in subsection (h)(1) by striking “designed”  
6           and inserting “designated”; and

7           (2) in subsection (j)(1) by striking “September  
8           31, 1988” and inserting “September 30, 1988”.

9           (f) SECTION 301.—Section 301(j)(1)(A) (33 U.S.C.  
10 1311(j)(1)(A)) is amended by striking “that” the first  
11 place it appears and inserting “than”.

12          (g) SECTION 309.—Section 309(d) (33 U.S.C.  
13 1319(d)) is amended by striking the second comma follow-  
14 ing “Act by a State”.

15          (h) SECTION 311.—Section 311 (33 U.S.C. 1321) is  
16 amended—

17           (1) in subsection (b) by moving paragraph (12)  
18           (including subparagraphs (A), (B) and (C)) 2 ems  
19           to the right; and

20           (2) in subsection (h)(2) by striking “The” and  
21           inserting “the”.

22          (i) SECTION 505.—Section 505(f) (33 U.S.C.  
23 1365(f)) is amended by striking the last comma.

24          (j) SECTION 516.—Section 516 (33 U.S.C. 1375) is  
25 amended by redesignating subsection (g) as subsection (f).

1 (k) SECTION 518.—Section 518(f) (33 U.S.C.  
2 1377(f)) is amended by striking “(d)” and inserting “(e)”.

3 **SEC. 702. JOHN A. BLATNIK NATIONAL FRESH WATER**  
4 **QUALITY RESEARCH LABORATORY.**

5 (a) DESIGNATION.—The laboratory and research fa-  
6 cility established pursuant to section 104(e) of the Federal  
7 Water Pollution Control Act (33 U.S.C. 1254(e)) that is  
8 located in Duluth, Minnesota, shall be known and des-  
9 ignated as the “John A. Blatnik National Fresh Water  
10 Quality Research Laboratory”.

11 (b) REFERENCES.—Any reference in a law, map, reg-  
12 ulation, document, paper, or other record of the United  
13 States to the laboratory and research facility referred to  
14 in subsection (a) shall be deemed to be a reference to the  
15 “John A. Blatnik National Fresh Water Quality Research  
16 Laboratory”.

17 **SEC. 703. WASTEWATER SERVICE FOR COLONIAS.**

18 (a) GRANT ASSISTANCE.—The Administrator may  
19 make grants to States along the United States-Mexico  
20 border to provide assistance for planning, design, and con-  
21 struction of treatment works and appropriate connections  
22 to provide wastewater service to the communities along  
23 such border commonly known as “colonias”.

24 (b) TREATMENT WORKS DEFINED.—For purposes of  
25 this section, the term “treatment works” has the meaning

1 such term has under section 212 of the Federal Water  
2 Pollution Control Act.

3 (c) AUTHORIZATION OF APPROPRIATIONS.—There is  
4 authorized to be appropriated for making grants under  
5 subsection (a) \$50,000,000 for fiscal year 1996. Such  
6 sums shall remain available until expended.

7 **SEC. 704. SAVINGS IN MUNICIPAL DRINKING WATER COSTS.**

8 (a) STUDY.—The Administrator of the Environ-  
9 mental Protection Agency, in consultation with the Direc-  
10 tor of the Office of Management and Budget, shall review,  
11 analyze, and compile information on the annual savings  
12 that municipalities realize in the construction, operation,  
13 and maintenance of drinking water facilities as a result  
14 of actions taken under the Federal Water Pollution Con-  
15 trol Act.

16 (b) CONTENTS.—The study conducted under sub-  
17 section (a), at a minimum, shall contain an examination  
18 of the following elements:

19 (1) Savings to municipalities in the construction  
20 of drinking water filtration facilities resulting from  
21 actions taken under the Federal Water Pollution  
22 Control Act.

23 (2) Savings to municipalities in the operation  
24 and maintenance of drinking water facilities result-  
25 ing from actions taken under such Act.

1           (3) Savings to municipalities in health expendi-  
2           tures resulting from actions taken under such Act.

3           (c) REPORT.—Not later than 1 year after the date  
4 of the enactment of this Act, the Administrator shall  
5 transmit to Congress a report containing the results of  
6 the study conducted under subsection (a).

7           **TITLE VIII—WETLANDS CON-**  
8           **SERVATION AND MANAGE-**  
9           **MENT**

10          **SEC. 801. SHORT TITLE.**

11           This title may be cited as the “Comprehensive Wet-  
12 lands Conservation and Management Act of 1995”.

13          **SEC. 802. FINDINGS AND STATEMENT OF PURPOSE.**

14           (a) FINDINGS.—Congress finds that—

15               (1) wetlands play an integral role in maintain-  
16               ing the quality of life through material contributions  
17               to our national economy, food supply, water supply  
18               and quality, flood control, and fish, wildlife, and  
19               plant resources, and thus to the health, safety,  
20               recreation and economic well-being of citizens  
21               throughout the Nation;

22               (2) wetlands serve important ecological and nat-  
23               ural resource functions, such as providing essential  
24               nesting and feeding habitat for waterfowl, other  
25               wildlife, and many rare and endangered species, fish-

1 eries habitat, the enhancement of water quality, and  
2 natural flood control;

3 (3) much of the Nation's resource has sustained  
4 significant degradation, resulting in the need for ef-  
5 fective programs to limit the loss of ecologically sig-  
6 nificant wetlands and to provide for long-term res-  
7 toration and enhancement of the wetlands resource  
8 base;

9 (4) most of the loss of wetlands in coastal Lou-  
10 isiana is not attributable to human activity;

11 (5) because 75 percent of the Nation's wetlands  
12 in the lower 48 States are privately owned and be-  
13 cause the majority of the Nation's population lives  
14 in or near wetlands areas, an effective wetlands con-  
15 servation and management program must reflect a  
16 balanced approach that conserves and enhances im-  
17 portant wetlands values and functions while observ-  
18 ing private property rights, recognizing the need for  
19 essential public infrastructure, such as highways,  
20 ports, airports, pipelines, sewer systems, and public  
21 water supply systems, and providing the opportunity  
22 for sustained economic growth;

23 (6) while wetlands provide many varied eco-  
24 nomic and environmental benefits, they also present  
25 health risks in some instances where they act as

1 breeding grounds for insects that are carriers of  
2 human and animal diseases;

3 (7) the Federal permit program established  
4 under section 404 of the Federal Water Pollution  
5 Control Act was not originally conceived as a wet-  
6 lands regulatory program and is insufficient to en-  
7 sure that the Nation's wetlands resource base will be  
8 conserved and managed in a fair and environ-  
9 mentally sound manner; and

10 (8) navigational dredging plays a vital role in  
11 the Nation's economy and, while adequate safe-  
12 guards for aquatic resources must be maintained, it  
13 is essential that the regulatory process be stream-  
14 lined.

15 (b) PURPOSE.—The purpose of this title is to estab-  
16 lish a new Federal regulatory program for certain wet-  
17 lands and waters of the United States—

18 (1) to assert Federal regulatory jurisdiction  
19 over a broad category of specifically identified activi-  
20 ties that result in the degradation or loss of wet-  
21 lands;

22 (2) to provide that each Federal agency, officer,  
23 and employee exercise Federal authority under sec-  
24 tion 404 of the Federal Water Pollution Control Act  
25 to ensure that agency action under such section will

1 not limit the use of privately owned property so as  
2 to diminish its value;

3 (3) to account for variations in wetlands func-  
4 tions in determining the character and extent of reg-  
5 ulation of activities occurring in wetlands areas;

6 (4) to provide sufficient regulatory incentives  
7 for conservation, restoration, or enhancement activi-  
8 ties;

9 (5) to encourage conservation of resources on a  
10 watershed basis to the fullest extent practicable;

11 (6) to protect public safety and balance public  
12 and private interests in determining the conditions  
13 under which activity in wetlands areas may occur;  
14 and

15 (7) to streamline the regulatory mechanisms re-  
16 lating to navigational dredging in the Nation's wa-  
17 ters.

18 **SEC. 803. WETLANDS CONSERVATION AND MANAGEMENT.**

19 Title IV (33 U.S.C. 1341 et seq.) is further amended  
20 by striking section 404 and inserting the following new  
21 section:

22 **“SEC. 404. PERMITS FOR ACTIVITIES IN WETLANDS OR WA-  
23 TERS OF THE UNITED STATES.**

24 **“(a) PROHIBITED ACTIVITIES.—**No person shall un-  
25 dertake an activity in wetlands or waters of the United

1 States unless such activity is undertaken pursuant to a  
2 permit issued by the Secretary or is otherwise authorized  
3 under this section.

4 “(b) AUTHORIZED ACTIVITIES.—

5 “(1) PERMITS.—The Secretary is authorized to  
6 issue permits authorizing an activity in wetlands or  
7 waters of the United States in accordance with the  
8 requirements of this section.

9 “(2) NONPERMIT ACTIVITIES.—An activity in  
10 wetlands or waters of the United States may be un-  
11 dertaken without a permit from the Secretary if that  
12 activity is authorized under subsection (e)(6) or  
13 (e)(8) or is exempt from the requirements of this  
14 section under subsection (f) or other provisions of  
15 this section.

16 “(c) WETLANDS CLASSIFICATION.—

17 “(1) REGULATIONS; APPLICATIONS.—

18 “(A) DEADLINE FOR ISSUANCE OF REGU-  
19 LATIONS.—Not later than 1 year after the date  
20 of the enactment of the Comprehensive Wet-  
21 lands Conservation and Management Act of  
22 1995, the Secretary, in consultation with the  
23 States, shall issue regulations to classify wet-  
24 lands as type A, type B, or type C wetlands de-



1 pending on the relative ecological significance of  
2 the wetlands.

3 “(B) APPLICATION REQUIREMENT.—Any  
4 person seeking to undertake activities in wet-  
5 lands or waters of the United States for which  
6 a permit is required under this section shall  
7 make application to the Secretary identifying  
8 the site of such activity and requesting that the  
9 Secretary determine, in accordance with para-  
10 graph (3) of this subsection, the classification  
11 of the wetlands in which such activity is pro-  
12 posed to occur. The applicant may also provide  
13 such additional information regarding such pro-  
14 posed activity as may be necessary or appro-  
15 priate for purposes of determining the classi-  
16 fication of such wetlands or whether and under  
17 what conditions the proposed activity may be  
18 permitted to occur.

19 “(2) DEADLINES FOR CLASSIFICATIONS.—

20 “(A) GENERAL RULE.—Except as provided  
21 in subparagraph (B) of this paragraph, within  
22 90 days following the receipt of an application  
23 under paragraph (1), the Secretary shall pro-  
24 vide notice to the applicant of the classification  
25 of the wetlands that are the subject of such ap-

1 plication and shall state in writing the basis for  
2 such classification. The classification of the wet-  
3 lands that are the subject of the application  
4 shall be determined by the Secretary in accord-  
5 ance with the requirements for classification of  
6 wetlands under paragraph (3) and subsection  
7 (i).

8 “(B) RULE FOR ADVANCE CLASSIFICA-  
9 TIONS.—In the case of an application proposing  
10 activities located in wetlands that are the sub-  
11 ject of an advance classification under sub-  
12 section (h), the Secretary shall provide notice to  
13 the applicant of such classification within thirty  
14 days following the receipt of such application,  
15 and shall provide an opportunity for review of  
16 such classification under paragraph (5) and  
17 subsection (i).

18 “(3) CLASSIFICATION SYSTEM.—Upon applica-  
19 tion under this subsection, the Secretary shall—

20 “(A) classify as type A wetlands those wet-  
21 lands that are of critical significance to the  
22 long-term conservation of the aquatic environ-  
23 ment of which such wetlands are a part and  
24 which meet the following requirements:

1           “(i) such wetlands serve critical wet-  
2           lands functions, including the provision of  
3           critical habitat for a concentration of  
4           avian, aquatic, or wetland dependent wild-  
5           life;

6           “(ii) such wetlands consist of or may  
7           be a portion of ten or more contiguous  
8           acres and have an inlet or outlet for relief  
9           of water flow; except that this requirement  
10          shall not operate to preclude the classifica-  
11          tion as type A wetlands lands containing  
12          prairie pothole features, playa lakes, or  
13          vernal pools if such lands otherwise meet  
14          the requirements for type A classification  
15          under this paragraph based on verifiable,  
16          objective science;

17          “(iii) there exists a scarcity within the  
18          watershed or aquatic environment of iden-  
19          tified functions served by such wetlands  
20          such that the use of such wetlands for an  
21          activity in wetlands or waters of the Unit-  
22          ed States would seriously jeopardize the  
23          availability of these identified wetlands  
24          functions; and

1           “(iv) there is unlikely to be an over-  
2           riding public interest in the use of such  
3           wetlands for purposes other than conserva-  
4           tion;

5           “(B) classify as type B wetlands those wet-  
6           lands that provide habitat for a significant pop-  
7           ulation of wetland dependent wildlife or provide  
8           other significant wetlands functions, including  
9           significant enhancement or protection of water  
10          quality or significant natural flood control; and

11          “(C) classify as type C wetlands all wet-  
12          lands that—

13               “(i) serve limited wetlands functions;

14               “(ii) serve marginal wetlands func-  
15               tions but which exist in such abundance  
16               that regulation of activities in such wet-  
17               lands is not necessary for conserving im-  
18               portant wetlands functions;

19               “(iii) are fastlands; or

20               “(iv) are wetlands within industrial,  
21               commercial, or residential complexes or  
22               other intensely developed areas that do not  
23               serve significant wetlands functions as a  
24               result of such location.

1           “(4) REQUEST FOR DETERMINATION OF JURIS-  
2           DICTION.—

3           “(A) IN GENERAL.—A person who holds  
4           an ownership interest in property, or who has  
5           written authorization from such a person, may  
6           submit a request to the Secretary identifying  
7           the property and requesting the Secretary to  
8           make one or more of the following determina-  
9           tions with respect to the property:

10           “(i) Whether the property contains  
11           waters of the United States.

12           “(ii) If the determination under clause  
13           (i) is made, whether any portion of the wa-  
14           ters meets the requirements for delineation  
15           as wetland under subsection (g).

16           “(iii) If the determination under  
17           clause (ii) is made, the classification of  
18           each wetland on the property under this  
19           subsection.

20           “(B) PROVISION OF INFORMATION.—The  
21           person shall provide such additional information  
22           as may be necessary to make each determina-  
23           tion requested under subparagraph (A).

24           “(C) DETERMINATION AND NOTIFICATION  
25           BY THE SECRETARY.—Not later than 90 days

1 after receipt of a request under subparagraph  
2 (A), the Secretary shall—

3 “(i) notify the person submitting the  
4 request of each determination made by the  
5 Secretary pursuant to the request; and

6 “(ii) provide written documentation of  
7 each determination and the basis for each  
8 determination.

9 “(D) AUTHORITY TO SEEK IMMEDIATE RE-  
10 VIEW.—Any person authorized under this para-  
11 graph to request a jurisdictional determination  
12 may seek immediate judicial review of any such  
13 jurisdictional determination or may proceed  
14 under subsection (i).

15 “(5) DE NOVO DETERMINATION AFTER AD-  
16 VANCE CLASSIFICATION.—Within 30 days of receipt  
17 of notice of an advance classification by the Sec-  
18 retary under paragraph (2)(B) of this subsection, an  
19 applicant may request the Secretary to make a de  
20 novo determination of the classification of wetlands  
21 that are the subject of such notice.

22 “(d) RIGHT TO COMPENSATION.—

23 “(1) IN GENERAL.—The Federal Government  
24 shall compensate an owner of property whose use of  
25 any portion of that property has been limited by an

1 agency action under this section that diminishes the  
2 fair market value of that portion by 20 percent or  
3 more. The amount of the compensation shall equal  
4 the diminution in value that resulted from the agen-  
5 cy action. If the diminution in value of a portion of  
6 that property is greater than 50 percent, at the op-  
7 tion of the owner, the Federal Government shall buy  
8 that portion of the property for its fair market  
9 value.

10 “(2) DURATION OF LIMITATION ON USE.—  
11 Property with respect to which compensation has  
12 been paid under this section shall not thereafter be  
13 used contrary to the limitation imposed by the agen-  
14 cy action, even if that action is later rescinded or  
15 otherwise vitiated. However, if that action is later  
16 rescinded or otherwise vitiated, and the owner elects  
17 to refund the amount of the compensation, adjusted  
18 for inflation, to the Treasury of the United States,  
19 the property may be so used.

20 “(3) EFFECT OF STATE LAW.—If a use is a  
21 nuisance as defined by the law of a State or is al-  
22 ready prohibited under a local zoning ordinance, no  
23 compensation shall be made under this section with  
24 respect to a limitation on that use.

25 “(4) EXCEPTIONS.—

1           “(A) PREVENTION OF HAZARD TO HEALTH  
2 OR SAFETY OR DAMAGE TO SPECIFIC PROP-  
3 ERTY.—No compensation shall be made under  
4 this section with respect to an agency action the  
5 primary purpose of which is to prevent an iden-  
6 tifiable—

7                   “(i) hazard to public health or safety;

8                   or

9                   “(ii) damage to specific property other  
10 than the property whose use is limited.

11           “(B) NAVIGATION SERVITUDE.—No com-  
12 pensation shall be made under this section with  
13 respect to an agency action pursuant to the  
14 Federal navigation servitude, as defined by the  
15 courts of the United States, except to the ex-  
16 tent such servitude is interpreted to apply to  
17 wetlands.

18           “(5) PROCEDURE.—

19                   “(A) REQUEST OF OWNER.—An owner  
20 seeking compensation under this section shall  
21 make a written request for compensation to the  
22 agency whose agency action resulted in the limi-  
23 tation. No such request may be made later than  
24 180 days after the owner receives actual notice  
25 of that agency action.



1           “(B) NEGOTIATIONS.—The agency may  
2 bargain with that owner to establish the  
3 amount of the compensation. If the agency and  
4 the owner agree to such an amount, the agency  
5 shall promptly pay the owner the amount  
6 agreed upon.

7           “(C) CHOICE OF REMEDIES.—If, not later  
8 than 180 days after the written request is  
9 made, the parties do not come to an agreement  
10 as to the right to and amount of compensation,  
11 the owner may choose to take the matter to  
12 binding arbitration or seek compensation in a  
13 civil action.

14           “(D) ARBITRATION.—The procedures that  
15 govern the arbitration shall, as nearly as prac-  
16 ticable, be those established under title 9, Unit-  
17 ed States Code, for arbitration proceedings to  
18 which that title applies. An award made in such  
19 arbitration shall include a reasonable attorney’s  
20 fee and other arbitration costs (including ap-  
21 praisal fees). The agency shall promptly pay  
22 any award made to the owner.

23           “(E) CIVIL ACTION.—An owner who does  
24 not choose arbitration, or who does not receive  
25 prompt payment when required by this section,

1 may obtain appropriate relief in a civil action  
2 against the agency. An owner who prevails in a  
3 civil action under this section shall be entitled  
4 to, and the agency shall be liable for, a reason-  
5 able attorney's fee and other litigation costs (in-  
6 cluding appraisal fees). The court shall award  
7 interest on the amount of any compensation  
8 from the time of the limitation.

9 “(F) SOURCE OF PAYMENTS.—Any pay-  
10 ment made under this section to an owner and  
11 any judgment obtained by an owner in a civil  
12 action under this section shall, notwithstanding  
13 any other provision of law, be made from the  
14 annual appropriation of the agency whose ac-  
15 tion occasioned the payment or judgment. If the  
16 agency action resulted from a requirement im-  
17 posed by another agency, then the agency mak-  
18 ing the payment or satisfying the judgment  
19 may seek partial or complete reimbursement  
20 from the appropriated funds of the other agen-  
21 cy. For this purpose the head of the agency  
22 concerned may transfer or reprogram any ap-  
23 propriated funds available to the agency. If in-  
24 sufficient funds exist for the payment or to sat-  
25 isfy the judgment, it shall be the duty of the

1 head of the agency to seek the appropriation  
2 of such funds for the next fiscal year.

3 “(6) LIMITATION.—Notwithstanding any other  
4 provision of law, any obligation of the United States  
5 to make any payment under this section shall be  
6 subject to the availability of appropriations.

7 “(7) DUTY OF NOTICE TO OWNERS.—Whenever  
8 an agency takes an agency action limiting the use of  
9 private property, the agency shall give appropriate  
10 notice to the owners of that property directly af-  
11 fected explaining their rights under this section and  
12 the procedures for obtaining any compensation that  
13 may be due to them under this section.

14 “(8) RULES OF CONSTRUCTION.—

15 “(A) EFFECT ON CONSTITUTIONAL RIGHT  
16 TO COMPENSATION.—Nothing in this section  
17 shall be construed to limit any right to com-  
18 pensation that exists under the Constitution,  
19 laws of the United States, or laws of any State.

20 “(B) EFFECT OF PAYMENT.—Payment of  
21 compensation under this section (other than  
22 when the property is bought by the Federal  
23 Government at the option of the owner) shall  
24 not confer any rights on the Federal Govern-

1           ment other than the limitation on use resulting  
2           from the agency action.

3           “(9) TREATMENT OF CERTAIN ACTIONS.—A  
4           diminution in value under this subsection shall apply  
5           to surface interests in lands only or water rights al-  
6           located under State law; except that—

7                   “(A) if the Secretary determines that the  
8                   exploration for or development of oil and gas or  
9                   mineral interests is not compatible with limita-  
10                  tions on use related to the surface interests in  
11                  lands that have been classified as type A or  
12                  type B wetlands located above such oil and gas  
13                  or mineral interests (or located adjacent to such  
14                  oil and gas or mineral interests where such ad-  
15                  jacent lands are necessary to provide reasonable  
16                  access to such interests), the Secretary shall no-  
17                  tify the owner of such interests that the owner  
18                  may elect to receive compensation for such in-  
19                  terests under paragraph (1); and

20                   “(B) the failure to provide reasonable ac-  
21                  cess to oil and gas or mineral interests located  
22                  beneath or adjacent to surface interests of type  
23                  A or type B wetlands shall be deemed a diminu-  
24                  tion in value of such oil and gas or mineral in-  
25                  terests.

1           “(10) JURISDICTION.—The arbitrator or court  
2           under paragraph (5)(D) or (5)(E) of this subsection,  
3           as the case may be, shall have jurisdiction, in the  
4           case of oil and gas or mineral interests, to require  
5           the United States to provide reasonable access in,  
6           across, or through lands that may be the subject of  
7           a diminution in value under this subsection solely for  
8           the purpose of undertaking activity necessary to de-  
9           termine the value of the interests diminished and to  
10          provide other equitable remedies deemed appro-  
11          priate.

12           “(11) LIMITATIONS ON STATUTORY CONSTRUC-  
13          TION.—No action under this subsection shall be con-  
14          strued—

15                   “(A) to impose any obligation on any State  
16                   or political subdivision thereof to compensate  
17                   any person, even in the event that the Secretary  
18                   has approved a land management plan under  
19                   subsection (f)(2) or an individual and general  
20                   permit program under subsection (l); or

21                   “(B) to alter or supersede requirements  
22                   governing use of water applicable under State  
23                   law.

24           “(e) REQUIREMENTS APPLICABLE TO PERMITTED  
25          ACTIVITY.—

1           “(1) ISSUANCE OR DENIAL OF PERMITS.—Fol-  
2           lowing the determination of wetlands classification  
3           pursuant to subsection (c) if applicable, and after  
4           compliance with the requirements of subsection (d)  
5           if applicable, the Secretary may issue or deny per-  
6           mits for authorization to undertake activities in wet-  
7           lands or waters of the United States in accordance  
8           with the requirements of this subsection.

9           “(2) TYPE A WETLANDS.—

10           “(A) ANALYSIS.—The Secretary shall de-  
11           termine whether to issue a permit for an activ-  
12           ity in waters of the United States classified  
13           under subsection (c) as type A wetlands based  
14           on—

15                   “(i) a sequential analysis that seeks,  
16                   to the maximum extent practicable, to—

17                           “(I) avoid adverse impact on the  
18                           wetlands;

19                           “(II) minimize such adverse im-  
20                           pact on wetlands functions that can-  
21                           not be avoided; and

22                           “(III) compensate for any loss of  
23                           wetland functions that cannot be  
24                           avoided or minimized; and

1           “(ii) the public interest analysis de-  
2           scribed in paragraph (3).

3           “(B) WATER DEPENDENT ACTIVITY.—For  
4           purposes of subparagraph (A)(i)(I), if an activ-  
5           ity is water dependent, an alternative in an area  
6           that is not wetlands or waters of the United  
7           States shall not be presumed to be available. A  
8           water dependent activity is an activity that re-  
9           quires access or proximity to or siting within  
10          the wetlands or waters of the United States in  
11          question to fulfill its basic purpose.

12          “(C) MITIGATION TERMS AND CONDI-  
13          TIONS.—Any permit issued authorizing activi-  
14          ties in type A wetlands may contain such terms  
15          and conditions concerning mitigation (including  
16          those applicable under paragraph (3) for type B  
17          wetlands) that the Secretary deems appropriate  
18          to prevent the unacceptable loss or degradation  
19          of type A wetlands. The Secretary shall deem  
20          the mitigation requirement of this section to be  
21          met with respect to activities in type A wetlands  
22          if such activities (i) are carried out in accord-  
23          ance with a State-approved reclamation plan or  
24          permit which requires recontouring and  
25          revegetation following mining, and (ii) will re-

1           sult in overall environmental benefits being  
2           achieved.

3           “(3) TYPE B WETLANDS.—

4                   “(A) GENERAL RULE.—The Secretary may  
5           issue a permit authorizing activities in type B  
6           wetlands if the Secretary finds that issuance of  
7           the permit is in the public interest, balancing  
8           the reasonably foreseeable benefits and det-  
9           riments resulting from the issuance of the per-  
10          mit. The permit shall be subject to such terms  
11          and conditions as the Secretary finds are nec-  
12          essary to carry out the purposes of the Com-  
13          prehensive Wetlands Conservation and Manage-  
14          ment Act of 1995. In determining whether or  
15          not to issue the permit and whether or not spe-  
16          cific terms and conditions are necessary to  
17          avoid a significant loss of wetlands functions,  
18          the Secretary shall consider the following fac-  
19          tors:

20                           “(i) The quality and quantity of sig-  
21                           nificant functions served by the areas to be  
22                           affected.

23                           “(ii) The opportunities to reduce im-  
24                           pacts through cost effective design to mini-  
25                           mize use of wetlands areas.



1           “(iii) The costs of mitigation require-  
2           ments and the social, recreational, and eco-  
3           nomic benefits associated with the pro-  
4           posed activity, including local, regional, or  
5           national needs for improved or expanded  
6           infrastructure, minerals, energy, food pro-  
7           duction, or recreation.

8           “(iv) The ability of the permittee to  
9           mitigate wetlands loss or degradation as  
10          measured by wetlands functions.

11          “(v) The environmental benefit, meas-  
12          ured by wetlands functions, that may occur  
13          through mitigation efforts, including re-  
14          storing, preserving, enhancing, or creating  
15          wetlands values and functions.

16          “(vi) The marginal impact of the pro-  
17          posed activity on the watershed of which  
18          such wetlands are a part.

19          “(vii) Whether the impact on the wet-  
20          lands is temporary or permanent.

21          “(B) DETERMINATION OF PROJECT PUR-  
22          POSE.—In considering an application for activi-  
23          ties on type B wetlands, there shall be a rebut-  
24          table presumption that the project purpose as  
25          defined by the applicant shall be binding upon

1 the Secretary. The definition of project purpose  
2 for projects sponsored by public agencies shall  
3 be binding upon the Secretary, subject to the  
4 authority of the Secretary to impose mitigation  
5 requirements to minimize impacts on wetlands  
6 values and functions, including cost effective re-  
7 design of projects on the proposed project site.

8 “(C) MITIGATION REQUIREMENTS.—Ex-  
9 cept as otherwise provided in this section, re-  
10 quirements for mitigation shall be imposed  
11 when the Secretary finds that activities under-  
12 taken under this section will result in the loss  
13 or degradation of type B wetlands functions  
14 where such loss or degradation is not a tem-  
15 porary or incidental impact. When determining  
16 mitigation requirements in any specific case,  
17 the Secretary shall take into consideration the  
18 type of wetlands affected, the character of the  
19 impact on wetland functions, whether any ad-  
20 verse effects on wetlands are of a permanent or  
21 temporary nature, and the cost effectiveness of  
22 such mitigation and shall seek to minimize the  
23 costs of such mitigation. Such mitigation re-  
24 quirement shall be calculated based upon the  
25 specific impact of a particular project. The Sec-

1           retary shall deem the mitigation requirement of  
2           this section to be met with respect to activities  
3           in type B wetlands if such activities (i) are car-  
4           ried out in accordance with a State-approved  
5           reclamation plan or permit which requires  
6           recontouring and revegetation following mining,  
7           and (ii) will result in overall environmental ben-  
8           efits being achieved.

9           “(D) RULES GOVERNING MITIGATION.—In  
10          accordance with subsection (j), the Secretary  
11          shall issue rules governing requirements for  
12          mitigation for activities occurring in wetlands  
13          that allow for—

14                 “(i) minimization of impacts through  
15                 project design in the proposed project site  
16                 consistent with the project’s purpose, pro-  
17                 visions for compensatory mitigation, if any,  
18                 and other terms and conditions necessary  
19                 and appropriate in the public interest;

20                 “(ii) preservation or donation of type  
21                 A wetlands or type B wetlands (where title  
22                 has not been acquired by the United States  
23                 and no compensation under subsection (d)  
24                 for such wetlands has been provided) as

1 mitigation for activities that alter or de-  
2 grade wetlands;

3 “(iii) enhancement or restoration of  
4 degraded wetlands as compensation for  
5 wetlands lost or degraded through per-  
6 mitted activity;

7 “(iv) creation of wetlands as com-  
8 pensation for wetlands lost or degraded  
9 through permitted activity if conditions are  
10 imposed that have a reasonable likelihood  
11 of being successful;

12 “(v) compensation through contribu-  
13 tion to a mitigation bank program estab-  
14 lished pursuant to paragraph (4);

15 “(vi) offsite compensatory mitigation  
16 if such mitigation contributes to the res-  
17 toration, enhancement or creation of sig-  
18 nificant wetlands functions on a watershed  
19 basis and is balanced with the effects that  
20 the proposed activity will have on the spe-  
21 cific site; except that offsite compensatory  
22 mitigation, if any, shall be required only  
23 within the State within which the proposed  
24 activity is to occur, and shall, to the extent  
25 practicable, be within the watershed within

1           which the proposed activity is to occur, un-  
2           less otherwise consistent with a State wet-  
3           lands management plan;

4           “(vii) contribution of in-kind value ac-  
5           ceptable to the Secretary and otherwise au-  
6           thorized by law;

7           “(viii) in areas subject to wetlands  
8           loss, the construction of coastal protection  
9           and enhancement projects;

10          “(ix) contribution of resources of  
11          more than one permittee toward a single  
12          mitigation project; and

13          “(x) other mitigation measures, in-  
14          cluding contributions of other than in-kind  
15          value referred to in clause (vii), determined  
16          by the Secretary to be appropriate in the  
17          public interest and consistent with the re-  
18          quirements and purposes of this Act.

19          “(E) LIMITATIONS ON REQUIRING MITIGA-  
20          TION.—Notwithstanding the provisions of sub-  
21          paragraph (C), the Secretary may determine  
22          not to impose requirements for compensatory  
23          mitigation if the Secretary finds that—

24               “(i) the adverse impacts of a per-  
25               mitted activity are limited;

1           “(ii) the failure to impose compen-  
2           satory mitigation requirements is compat-  
3           ible with maintaining wetlands functions;

4           “(iii) no practicable and reasonable  
5           means of mitigation are available;

6           “(iv) there is an abundance of similar  
7           significant wetlands functions and values  
8           in or near the area in which the proposed  
9           activity is to occur that will continue to  
10          serve the functions lost or degraded as a  
11          result of such activity, taking into account  
12          the impacts of such proposed activity and  
13          the cumulative impacts of similar activity  
14          in the area;

15          “(v) the temporary character of the  
16          impacts and the use of minimization tech-  
17          niques make compensatory mitigation un-  
18          necessary to protect significant wetlands  
19          values; or

20          “(vi) a waiver from requirements for  
21          compensatory mitigation is necessary to  
22          prevent special hardship.

23          “(4) MITIGATION BANKS.—

24                 “(A) ESTABLISHMENT.—Not later than 6  
25          months after the date of the enactment of this

1           subparagraph, after providing notice and oppor-  
2           tunity for public review and comment, the Sec-  
3           retary shall issue regulations for the establish-  
4           ment, use, maintenance, and oversight of miti-  
5           gation banks. The regulations shall be devel-  
6           oped in consultation with the heads of other ap-  
7           propriate Federal agencies.

8           “(B) PROVISIONS AND REQUIREMENTS.—  
9           The regulations issued pursuant to subpara-  
10          graph (A) shall ensure that each mitigation  
11          bank—

12                 “(i) provides for the chemical, phys-  
13                 ical, and biological functions of wetlands or  
14                 waters of the United States which are lost  
15                 as a result of authorized adverse impacts  
16                 to wetlands or other waters of the United  
17                 States;

18                 “(ii) to the extent practicable and en-  
19                 vironmentally desirable, provides in-kind  
20                 replacement of lost wetlands functions and  
21                 be located in, or in proximity to, the same  
22                 watershed or designated geographic area  
23                 as the affected wetlands or waters of the  
24                 United States;

1           “(iii) be operated by a public or pri-  
2           vate entity which has the financial capabil-  
3           ity to meet the requirements of this para-  
4           graph, including the deposit of a perform-  
5           ance bond or other appropriate demonstra-  
6           tion of financial responsibility to support  
7           the long-term maintenance of the bank,  
8           fulfill responsibilities for long-term mon-  
9           itoring, maintenance, and protection, and  
10          provide for the long-term security of own-  
11          ership interests of wetlands and uplands  
12          on which projects are conducted to protect  
13          the wetlands functions associated with the  
14          mitigation bank;

15          “(iv) employ consistent and scientif-  
16          ically sound methods to determine debits  
17          by evaluating wetlands functions, project  
18          impacts, and duration of the impact at the  
19          sites of proposed permits for authorized  
20          activities pursuant to this section and to  
21          determine credits based on wetlands func-  
22          tions at the site of the mitigation bank;

23          “(v) provide for the transfer of credits  
24          for mitigation that has been performed and  
25          for mitigation that shall be performed



1 within a designated time in the future,  
2 provided that financial bonds shall be post-  
3 ed in sufficient amount to ensure that the  
4 mitigation will be performed in the case of  
5 default;

6 “(vi) provide, where appropriate, for  
7 dual use of wetlands within the mitigation  
8 bank, as long as the use other than provid-  
9 ing compensatory mitigation under this  
10 section (I) shall not interfere with the  
11 functioning of such bank for providing  
12 such mitigation, and (II) shall not ad-  
13 versely impact wetlands or other waters of  
14 the United States; and

15 “(vii) provide opportunity for public  
16 notice of and comment on proposals for the  
17 mitigation banks; except that any process  
18 utilized by a mitigation bank to obtain a  
19 permit authorizing operations under this  
20 section before the date of the enactment of  
21 the Comprehensive Wetlands Conservation  
22 and Management Act of 1995 satisfies the  
23 requirement for such public notice and  
24 comment.

1           “(5) PROCEDURES AND DEADLINES FOR FINAL  
2 ACTION.—

3           “(A) OPPORTUNITY FOR PUBLIC COM-  
4 MENT.—Not later than 15 days after receipt of  
5 a complete application for a permit under this  
6 section, together with information necessary to  
7 consider such application, the Secretary shall  
8 publish notice that the application has been re-  
9 ceived and shall provide opportunity for public  
10 comment and, to the extent appropriate, oppor-  
11 tunity for a public hearing on the issuance of  
12 the permit.

13           “(B) GENERAL PROCEDURES.—In the case  
14 of any application for authorization to under-  
15 take activities in wetlands or waters of the  
16 United States that are not eligible for treat-  
17 ment on an expedited basis pursuant to para-  
18 graph (8), final action by the Secretary shall  
19 occur within 90 days following the date such  
20 application is filed, unless—

21           “(i) the Secretary and the applicant  
22 agree that such final action shall occur  
23 within a longer period of time;

24           “(ii) the Secretary determines that an  
25 additional, specified period of time is nec-

1           essary to permit the Secretary to comply  
2           with other applicable Federal law; except  
3           that if the Secretary is required under the  
4           National Environmental Policy Act of  
5           1969 (42 U.S.C. 4321 et seq.) to prepare  
6           an environmental impact statement, with  
7           respect to the application, the final action  
8           shall occur not later than 45 days follow-  
9           ing the date such statement is filed; or

10           “(iii) the Secretary, within 15 days  
11           from the date such application is received,  
12           notifies the applicant that such application  
13           does not contain all information necessary  
14           to allow the Secretary to consider such ap-  
15           plication and identifies any necessary addi-  
16           tional information, in which case, the pro-  
17           visions of subparagraph (C) shall apply.

18           “(C) SPECIAL RULE WHEN ADDITIONAL  
19           INFORMATION IS REQUIRED.—Upon the receipt  
20           of a request for additional information under  
21           subparagraph (B)(iii), the applicant shall sup-  
22           ply such additional information and shall advise  
23           the Secretary that the application contains all  
24           requested information and is therefore com-  
25           plete. The Secretary may—

1           “(i) within 30 days of the receipt of  
2           notice of the applicant that the application  
3           is complete, determine that the application  
4           does not contain all requested additional  
5           information and, on that basis, deny the  
6           application without prejudice to resubmis-  
7           sion; or

8           “(ii) within 90 days from the date  
9           that the applicant provides notification to  
10          the Secretary that the application is com-  
11          plete, review the application and take final  
12          action.

13          “(D) EFFECT OF NOT MEETING DEAD-  
14          LINE.—If the Secretary fails to take final ac-  
15          tion on an application under this paragraph  
16          within 90 days from the date that the applicant  
17          provides notification to the Secretary that such  
18          application is complete, a permit shall be pre-  
19          sumed to be granted authorizing the activities  
20          proposed in such application under such terms  
21          and conditions as are stated in such completed  
22          application.

23          “(6) TYPE C WETLANDS.—Activities in wet-  
24          lands that have been classified as type C wetlands

1 by the Secretary may be undertaken without author-  
2 ization required under subsection (a) of this section.

3 “(7) STATES WITH SUBSTANTIAL CONSERVED  
4 WETLANDS.—

5 “(A) IN GENERAL.—With respect to type  
6 A and type B wetlands in States with substan-  
7 tial conserved wetlands areas, at the option of  
8 the permit applicant, the Secretary shall issue  
9 permits authorizing activities in such wetlands  
10 pursuant to this paragraph. Final action on is-  
11 suance of such permits shall be in accordance  
12 with the procedures and deadlines of paragraph  
13 (5). The Secretary may include conditions or  
14 requirements for minimization of adverse im-  
15 pacts to wetlands functions when minimization  
16 is economically practicable. No permit to which  
17 this paragraph applies shall include conditions,  
18 requirements, or standards for mitigation to  
19 compensate for adverse impacts to wetlands or  
20 waters of the United States or conditions, re-  
21 quirements, or standards for avoidance of ad-  
22 verse impacts to wetlands or waters of the  
23 United States.

24 “(B) ECONOMIC BASE LANDS.—Upon ap-  
25 plication by the owner of economic base lands

1 in a State with substantial conserved wetlands  
2 areas, the Secretary shall issue individual and  
3 general permits to owners of such lands for ac-  
4 tivities in wetlands or waters of the United  
5 States. The Secretary shall reduce the require-  
6 ments of subparagraph (A)—

7 “(i) to allow economic base lands to  
8 be beneficially used to create and sustain  
9 economic activity; and

10 “(ii) in the case of lands owned by  
11 Alaska Native entities, to reflect the social  
12 and economic needs of Alaska Natives to  
13 utilize economic base lands.

14 The Secretary shall consult with and provide  
15 assistance to the Alaska Natives (including  
16 Alaska Native Corporations) in promulgation  
17 and administration of policies and regulations  
18 under this section.

19 “(8) GENERAL PERMITS.—

20 “(A) GENERAL AUTHORITY.—The Sec-  
21 retary may issue, by rule in accordance with  
22 subsection (j), general permits on a pro-  
23 grammatic, State, regional, or nationwide basis  
24 for any category of activities involving an activ-  
25 ity in wetlands or waters of the United States

1 if the Secretary determines that such activities  
2 are similar in nature and that such activities,  
3 when performed separately and cumulatively,  
4 will not result in the significant loss of eco-  
5 logically significant wetlands values and func-  
6 tions.

7 “(B) PROCEDURES.—Permits issued under  
8 this paragraph shall include procedures for ex-  
9 pedited review of eligibility for such permits (if  
10 such review is required) and may include re-  
11 quirements for reporting and mitigation. To the  
12 extent that a proposed activity requires a deter-  
13 mination by the Secretary as to the eligibility to  
14 qualify for a general permit under this sub-  
15 section, such determination shall be made with-  
16 in 30 days of the date of submission of the ap-  
17 plication for such qualification, or the applica-  
18 tion shall be treated as being approved.

19 “(C) COMPENSATORY MITIGATION.—Re-  
20 quirements for compensatory mitigation for  
21 general permits may be imposed where nec-  
22 essary to offset the significant loss or degrada-  
23 tion of significant wetlands functions where  
24 such loss or degradation is not a temporary or  
25 incidental impact. Such compensatory mitiga-

1           tion shall be calculated based upon the specific  
2           impact of a particular project.

3           “(D) GRANDFATHER OF EXISTING GEN-  
4           ERAL PERMITS.—General permits in effect on  
5           day before the date of the enactment of the  
6           Comprehensive Wetlands Conservation and  
7           Management Act of 1995 shall remain in effect  
8           until otherwise modified by the Secretary.

9           “(E) STATES WITH SUBSTANTIAL CON-  
10          SERVED LANDS.—Upon application by a State  
11          or local authority in a State with substantial  
12          conserved wetlands areas, the Secretary shall  
13          issue a general permit applicable to such au-  
14          thority for activities in wetlands or waters of  
15          the United States. No permit issued pursuant  
16          to this subparagraph shall include conditions,  
17          requirements, or standards for mitigation to  
18          compensate for adverse impacts to wetlands or  
19          waters of the United States or shall include  
20          conditions, requirements, or standards for  
21          avoidance of adverse impacts of wetlands or wa-  
22          ters of the United States.

23          “(9) OTHER WATERS OF THE UNITED  
24          STATES.—The Secretary may issue a permit author-  
25          izing activities in waters of the United States (other



1 than those classified as type A, B, or C wetlands  
2 under this section) if the Secretary finds that issu-  
3 ance of the permit is in the public interest, bal-  
4 ancing the reasonably foreseeable benefits and det-  
5 riments resulting from the issuance of the permit.  
6 The permit shall be subject to such terms and condi-  
7 tions as the Secretary finds are necessary to carry  
8 out the purposes of the Comprehensive Wetlands  
9 Conservation and Management Act of 1995. In de-  
10 termining whether or not to issue the permit and  
11 whether or not specific terms and conditions are nec-  
12 essary to carry out such purposes, the Secretary  
13 shall consider the factors set forth in paragraph  
14 (3)(A) as they apply to nonwetlands areas and such  
15 other provisions of paragraph (3) as the Secretary  
16 determines are appropriate to apply to nonwetlands  
17 areas.

18 “(10) MITIGATION OF AGRICULTURAL  
19 LANDS.—Any mitigation requirement approved by  
20 the Secretary under this section for agricultural  
21 lands shall be developed in consultataion with the  
22 Secretary of Agriculture.

23 “(f) ACTIVITIES NOT REQUIRING PERMIT.—

24 “(1) IN GENERAL.—Activities undertaken in  
25 any wetlands or waters of the United States are ex-

1       empt from the requirements of this section and are  
2       not prohibited by or otherwise subject to regulation  
3       under this section or section 301 or 402 of this Act  
4       (except effluent standards or prohibitions under sec-  
5       tion 307 of this Act) if such activities—

6               “(A) result from normal farming,  
7               silviculture, aquaculture, and ranching activities  
8               and practices, including but not limited to plow-  
9               ing, seeding, cultivating, haying, grazing, nor-  
10              mal maintenance activities, minor drainage,  
11              burning of vegetation in connection with such  
12              activities, harvesting for the production of food,  
13              fiber, and forest products, or upland soil and  
14              water conservation practices;

15             “(B) are for the purpose of maintenance,  
16             including emergency reconstruction of recently  
17             damaged parts, of currently serviceable struc-  
18             tures such as dikes, dams, levees, flood control  
19             channels or other engineered flood control facili-  
20             ties, water control structures, water supply res-  
21             ervoirs (where such maintenance involves peri-  
22             odic water level drawdowns) which provide  
23             water predominantly to public drinking water  
24             systems, groins, riprap, breakwaters, utility dis-  
25             tribution and transmission lines, causeways,

1 and bridge abutments or approaches, and trans-  
2 portation structures;

3 “(C) are for the purpose of construction or  
4 maintenance of farm, stock or aquaculture  
5 ponds, wastewater retention or management fa-  
6 cilities (including dikes and berms and related  
7 structures) that are used by concentrated ani-  
8 mal feeding operations or advanced treatment  
9 municipal wastewater reuse operations, or irri-  
10 gation canals and ditches or the maintenance of  
11 drainage ditches;

12 “(D) are for the purpose of construction of  
13 temporary sedimentation basins on a construc-  
14 tion site, or the construction of any upland  
15 dredged material disposal area, which does not  
16 include placement of fill material into the navi-  
17 gable waters;

18 “(E) are for the purpose of construction or  
19 maintenance of farm roads or forest roads, rail-  
20 road lines of up to 10 miles in length, or tem-  
21 porary roads for moving mining equipment, ac-  
22 cess roads for utility distribution and trans-  
23 mission lines if such roads or railroad lines are  
24 constructed and maintained, in accordance with  
25 best management practices, to assure that flow

1 and circulation patterns and chemical and bio-  
2 logical characteristics of the waters are not im-  
3 paired, that the reach of the waters is not re-  
4 duced, and that any adverse effect on the  
5 aquatic environment will be otherwise mini-  
6 mized;

7 “(F) are undertaken on farmed wetlands,  
8 except that any change in use of such land for  
9 the purpose of undertaking activities that are  
10 not exempt from regulation under this sub-  
11 section shall be subject to the requirements of  
12 this section to the extent that such farmed wet-  
13 lands are ‘wetlands’ under this section;

14 “(G) result from any activity with respect  
15 to which a State has an approved program  
16 under section 208(b)(4) of this Act which meets  
17 the requirements of subparagraphs (B) and (C)  
18 of such section;

19 “(H) are consistent with a State or local  
20 land management plan submitted to the Sec-  
21 retary and approved pursuant to paragraph (2);

22 “(I) are undertaken in connection with a  
23 marsh management and conservation program  
24 in a coastal parish in the State of Louisiana  
25 where such program has been approved by the

1 Governor of such State or the designee of the  
2 Governor;

3 “(J) are undertaken on lands or involve  
4 activities within a State’s coastal zone which  
5 are excluded from regulation under a State  
6 coastal zone management program approved  
7 under the Coastal Zone Management Act of  
8 1972 (16 U.S.C. 1451, et seq.);

9 “(K) are undertaken in incidentally created  
10 wetlands, unless such incidentally created wet-  
11 lands have exhibited wetlands functions and val-  
12 ues for more than 5 years in which case activi-  
13 ties undertaken in such wetlands shall be sub-  
14 ject to the requirements of this section;

15 “(L) are for the purpose of preserving and  
16 enhancing aviation safety or are undertaken in  
17 order to prevent an airport hazard;

18 “(M) result from aggregate or clay mining  
19 activities in wetlands conducted pursuant to a  
20 State or Federal permit that requires the rec-  
21 lamation of such affected wetlands if such rec-  
22 lamation will be completed within 5 years of the  
23 commencement of activities at the site and,  
24 upon completion of such reclamation, the wet-  
25 lands will support wetlands functions equivalent

1 to the functions supported by the wetlands at  
2 the time of commencement of such activities;

3 “(N) are for the placement of a structural  
4 member for a pile-supported structure, such as  
5 a pier or dock, or for a linear project such as  
6 a bridge, transmission or distribution line foot-  
7 ing, powerline structure, or elevated or other  
8 walkway;

9 “(O) are for the placement of a piling in  
10 waters of the United States in a circumstance  
11 that involves—

12 “(i) a linear project described in sub-  
13 paragraph (N); or

14 “(ii) a structure such as a pier, boat-  
15 house, wharf, marina, lighthouse, or indi-  
16 vidual house built on stilts solely to reduce  
17 the potential of flooding;

18 “(P) are for the clearing (including mecha-  
19 nized clearing) of vegetation within a right-of-  
20 way associated with the development and main-  
21 tenance of a transmission or distribution line or  
22 other powerline structure or for the mainte-  
23 nance of water supply reservoirs which provide  
24 water predominantly to public drinking water  
25 systems;

1           “(Q) are undertaken in or affecting  
2 waterfilled depressions created in uplands inci-  
3 dental to construction activity, or are under-  
4 taken in or affecting pits excavated in uplands  
5 for the purpose of obtaining fill, sand, gravel,  
6 aggregates, or minerals, unless and until the  
7 construction or excavation operation is aban-  
8 doned;

9           “(R) are undertaken in a State with sub-  
10 stantial conserved wetlands areas and—

11               “(i) are for purposes of providing crit-  
12 ical infrastructure, including water and  
13 sewer systems, airports, roads, communica-  
14 tion sites, fuel storage sites, landfills, hous-  
15 ing, hospitals, medical clinics, schools, and  
16 other community infrastructure;

17               “(ii) are for construction and mainte-  
18 nance of log transfer facilities associated  
19 with log transportation activities;

20               “(iii) are for construction of tailings  
21 impoundments utilized for treatment facili-  
22 ties (as determined by the development  
23 document) for the mining subcategory for  
24 which the tailings impoundment is con-  
25 structed;

1           “(iv) are for construction of ice pads  
2           and ice roads and for purposes of snow  
3           storage and removal; or

4           “(v) result from any silvicultural ac-  
5           tivity or practice undertaken on economic  
6           base lands; or

7           “(S) result from the conduct of rec-  
8           reational hunting or shooting.

9           “(2) STATE OR LOCAL MANAGEMENT PLAN.—  
10          Any State or political subdivision thereof acting pur-  
11          suant to State authorization may develop a land  
12          management plan with respect to lands that include  
13          identified wetlands. The State or local government  
14          agency may submit any such plan to the Secretary  
15          for review and approval. The Secretary shall, within  
16          60 days, notify in writing the designated State or  
17          local official of approval or disapproval of any such  
18          plan. The Secretary shall approve any plan that is  
19          consistent with the purposes of this section. No per-  
20          son shall be entitled to judicial review of the decision  
21          of the Secretary to approve or disapprove a land  
22          management plan under this paragraph. Nothing in  
23          this paragraph shall be construed to alter, limit, or  
24          supersede the authority of a State or political sub-  
25          division thereof to establish land management plans



1 for purposes other than the provisions of this sub-  
2 section.

3 “(g) RULES FOR DELINEATING WETLANDS.—

4 “(1) STANDARDS.—

5 “(A) ISSUANCE OF RULE.—The Secretary  
6 is authorized and directed to establish stand-  
7 ards, by rule in accordance with subsection (j),  
8 that shall govern the delineation of lands as  
9 ‘wetlands’ for purposes of this section. Such  
10 rules shall be established after consultation with  
11 the heads of other appropriate Federal agencies  
12 and shall be binding on all Federal agencies in  
13 connection with the administration or imple-  
14 mentation of any provision of this section. The  
15 standards for delineation of wetlands and any  
16 decision of the Secretary, the Secretary of Agri-  
17 culture (in the case of agricultural lands and  
18 associated nonagricultural lands), or any other  
19 Federal officer or agency made in connection  
20 with the administration of this section shall  
21 comply with the requirements for delineation of  
22 wetlands set forth in subparagraphs (B) and  
23 (C).

24 “(B) EXCEPTIONS.—The standards estab-  
25 lished by rule or applied in any case for pur-

1 poses of this section shall ensure that lands are  
2 delineated as wetlands only if such lands are  
3 found to be ‘wetlands’ under section 502 of this  
4 Act; except that such standards may not—

5 “(i) result in the delineation of lands  
6 as wetlands unless clear evidence of wet-  
7 lands hydrology, hydrophytic vegetation,  
8 and hydric soil are found to be present  
9 during the period in which such delineation  
10 is made, which delineation shall be con-  
11 ducted during the growing season unless  
12 otherwise requested by the applicant;

13 “(ii) result in the classification of  
14 vegetation as hydrophytic if such vegeta-  
15 tion is equally adapted to dry or wet soil  
16 conditions or is more typically adapted to  
17 dry soil conditions than to wet soil condi-  
18 tions;

19 “(iii) result in the classification of  
20 lands as wetlands unless some obligate  
21 wetlands vegetation is found to be present  
22 during the period of delineation; except  
23 that if such vegetation has been removed  
24 for the purpose of evading jurisdiction

1 under this section, this clause shall not  
2 apply;

3 “(iv) result in the conclusion that wet-  
4 lands hydrology is present unless water is  
5 found to be present at the surface of such  
6 lands for 21 consecutive days in the grow-  
7 ing seasons in a majority of the years for  
8 which records are available; and

9 “(v) result in the classification of  
10 lands as wetlands that are temporarily or  
11 incidentally created as a result of adjacent  
12 development activity.

13 “(C) NORMAL CIRCUMSTANCES.—In addi-  
14 tion to the requirements of subparagraph (B),  
15 any standards established by rule or applied to  
16 delineate wetlands for purposes of this section  
17 shall provide that ‘normal circumstances’ shall  
18 be determined on the basis of the factual cir-  
19 cumstances in existence at the time a classifica-  
20 tion is made under subsection (h) or at the time  
21 of application under subsection (e), whichever is  
22 applicable, if such circumstances have not been  
23 altered by an activity prohibited under this sec-  
24 tion.

25 “(2) AGRICULTURAL LANDS.—

1           “(A) DELINEATION BY SECRETARY OF AG-  
2 RICULTURE.—For purposes of this section, wet-  
3 lands located on agricultural lands and associ-  
4 ated nonagricultural lands shall be delineated  
5 solely by the Secretary of Agriculture in accord-  
6 ance with subtitle C of title XII of the Food Se-  
7 curity Act of 1985 (16 U.S.C. 3821 et seq.).

8           “(B) EXEMPTION OF LANDS EXEMPTED  
9 UNDER FOOD SECURITY ACT.—Any area of ag-  
10 ricultural land or any activities related to the  
11 land determined to be exempt from the require-  
12 ments of subtitle C of title XII of the Food Se-  
13 curity Act of 1985 (16 U.S.C. 3821 et seq.)  
14 shall also be exempt from the requirements of  
15 this section for such period of time as those  
16 lands are used, or a good faith effort is shown  
17 by the owner or operator to use such lands, as  
18 agricultural lands.

19           “(C) EFFECT OF APPEAL DETERMINATION  
20 PURSUANT TO FOOD SECURITY ACT.—Any area  
21 of agricultural land or any activities related to  
22 the land determined to be exempt pursuant to  
23 an appeal taken pursuant to subtitle C of title  
24 XII of the Food Security Act of 1985 (16  
25 U.S.C. 3821 et seq.) shall be exempt under this

1 section for such period of time as those lands  
2 are used, or a good faith effort is shown by the  
3 owner or operator to use such lands, as agricul-  
4 tural lands.

5 “(D) DELINEATIONS GRANDFATHERED.—  
6 Delineations by the Secretary of Agriculture re-  
7 garding wetlands on agricultural lands and as-  
8 sociated nonagricultural lands that have become  
9 administratively final on or before the date of  
10 enactment of the Comprehensive Wetlands Con-  
11 servation and Management Act of 1995 shall  
12 not be subject to further delineation unless the  
13 owner requests a new delineation by the Sec-  
14 retary of Agriculture.

15 “(h) MAPPING AND PUBLIC NOTICE REQUIRE-  
16 MENTS.—

17 “(1) PROVISION OF PUBLIC NOTICE.—Not later  
18 than 90 days after the date of the enactment of the  
19 Comprehensive Wetlands Conservation and Manage-  
20 ment Act of 1995, the Secretary shall provide the  
21 court of each county, parish, or borough in which  
22 the wetland subject to classification under subsection  
23 (c) is located, a notice for posting near the property  
24 records of the county, parish, or borough. The notice  
25 shall—

1           “(A) state that wetlands regulated under  
2 this section may be located in the county, par-  
3 ish, or borough;

4           “(B) provide an explanation understand-  
5 able to the general public of how wetlands are  
6 delineated and classified;

7           “(C) describe the requirements and restric-  
8 tions of the regulatory program under this sec-  
9 tion; and

10           “(D) provide instructions on how to obtain  
11 a delineation and classification of wetlands  
12 under this section.

13           “(2) PROVISION OF DELINEATION DETERMINA-  
14 TIONS.—On completion under this section of a delin-  
15 eation and classification of property that contains  
16 wetlands or a delineation of property that contains  
17 waters of the United States that are not wetlands,  
18 the Secretary of Agriculture, in the case of wetlands  
19 located on agricultural lands and associated non-  
20 agricultural lands, and the Secretary, in the case of  
21 other lands, shall—

22           “(A) file a copy of the delineation, includ-  
23 ing the classification of any wetland located on  
24 the property, with the records of the property  
25 in the local courthouse; and

1           “(B) serve a copy of the delineation deter-  
2           mination on every owner of the property on  
3           record and any person with a recorded mort-  
4           gage or lien on the property.

5           “(3) NOTICE OF ENFORCEMENT ACTIONS.—The  
6           Secretary shall file notice of each enforcement action  
7           under this section taken with respect to private  
8           property with the records of the property in the local  
9           courthouse.

10           “(4) WETLANDS IDENTIFICATION AND CLASSI-  
11           FICATION PROJECT.—

12           “(A) IN GENERAL.—The Secretary and the  
13           Secretary of Agriculture shall undertake a  
14           project to identify and classify wetlands in the  
15           United States that are regulated under this sec-  
16           tion. The Secretaries shall complete such  
17           project not later than 10 years after the date  
18           of the enactment of the Comprehensive Wet-  
19           lands Conservation and Management Act of  
20           1995.

21           “(B) APPLICABILITY OF DELINEATION  
22           STANDARDS.—In conducting the project under  
23           this section, the Secretaries shall identify and  
24           classify wetlands in accordance with standards

1 for delineation of wetlands established by the  
2 Secretaries under subsection (g).

3 “(C) PUBLIC HEARINGS.—In conducting  
4 the project under this section, the Secretaries  
5 shall provide notice and an opportunity for a  
6 public hearing in each county, parish or bor-  
7 ough of a State before completion of identifica-  
8 tion and classification of wetlands in such coun-  
9 ty, parish, or borough.

10 “(D) PUBLICATION.—Promptly after com-  
11 pletion of identification and classification of  
12 wetlands in a county, parish, or borough under  
13 this section, the Secretaries shall have published  
14 information on such identification and classi-  
15 fication in the Federal Register and in publica-  
16 tions of wide circulation and take other steps  
17 reasonably necessary to ensure that such infor-  
18 mation is available to the public.

19 “(E) REPORTS.—The Secretaries shall re-  
20 port to Congress on implementation of the  
21 project to be conducted under this section not  
22 later than 2 years after the date of the enact-  
23 ment of the Comprehensive Wetlands Conserva-  
24 tion and Management Act of 1995 and annually  
25 thereafter.



1           “(F) RECORDATION.—Any classification of  
2           lands as wetlands under this section shall, to  
3           the maximum extent practicable, be recorded on  
4           the property records in the county, parish, or  
5           borough in which such wetlands are located.

6           “(G) PERMISSION TO ENTER ONTO PRI-  
7           VATE PROPERTY.—The Secretaries shall obtain  
8           written permission from the owner of private  
9           property before entering such property to con-  
10          duct identification and classification of wetlands  
11          pursuant to this paragraph.

12          “(i) ADMINISTRATIVE APPEALS.—

13               “(1) REGULATIONS ESTABLISHING PROCE-  
14               DURES.—Not later than 1 year after the date of the  
15               enactment of the Comprehensive Wetlands Conserva-  
16               tion and Management Act of 1995, the Secretary  
17               shall, after providing notice and opportunity for pub-  
18               lic comment, issue regulations establishing proce-  
19               dures pursuant to which—

20                       “(A) a landowner may appeal a determina-  
21                       tion of regulatory jurisdiction under this section  
22                       with respect to a parcel of the landowner’s  
23                       property;

1           “(B) a landowner may appeal a wetlands  
2 classification under this section with respect to  
3 a parcel of the landowner’s property;

4           “(C) any person may appeal a determina-  
5 tion that the proposed activity on the land-  
6 owner’s property is not exempt under sub-  
7 section (f);

8           “(D) a landowner may appeal a determina-  
9 tion that an activity on the landowner’s prop-  
10 erty does not qualify under a general permit is-  
11 sued under this section;

12           “(E) an applicant for a permit under this  
13 section may appeal a determination made pur-  
14 suant to this section to deny issuance of the  
15 permit or to impose a requirement under the  
16 permit; and

17           “(F) a landowner or any other person re-  
18 quired to restore or otherwise alter a parcel of  
19 property pursuant to an order issued under this  
20 section may appeal such order.

21           “(2) DEADLINE FOR FILING APPEAL.—An ap-  
22 peal brought pursuant to this subsection shall be  
23 filed not later than 30 days after the date on which  
24 the decision or action on which the appeal is based  
25 occurs.

1           “(3) DEADLINE FOR DECISION.—An appeal  
2 brought pursuant to this subsection shall be decided  
3 not later than 90 days after the date on which the  
4 appeal is filed.

5           “(4) PARTICIPATION IN APPEALS PROCESS.—  
6 Any person who participated in the public comment  
7 process concerning a decision or action that is the  
8 subject of an appeal brought pursuant to this sub-  
9 section may participate in such appeal with respect  
10 to those issues raised in the person’s written public  
11 comments.

12           “(5) DECISIONMAKER.—An appeal brought  
13 pursuant to this subsection shall be heard and de-  
14 cided by an appropriate and impartial official of the  
15 Federal Government, other than the official who  
16 made the determination or carried out the action  
17 that is the subject of the appeal.

18           “(6) STAY OF PENALTIES AND MITIGATION.—A  
19 landowner or any other person who has filed an ap-  
20 peal under this subsection shall not be required to  
21 pay a penalty or perform mitigation or restoration  
22 assessed under this section or section 309 until after  
23 the appeal has been decided.

24           “(j) ADMINISTRATIVE PROVISIONS.—

1           “(1) FINAL REGULATIONS FOR ISSUANCE OF  
2 PERMITS.—Not later than 1 year after the date of  
3 the enactment of the Comprehensive Wetlands Con-  
4 servation and Management Act of 1995, the Sec-  
5 retary shall, after notice and opportunity for com-  
6 ment, issue (in accordance with section 553 of title  
7 5 of the United States Code and this section) final  
8 regulations for implementation of this section. Such  
9 regulations shall, in accordance with this section,  
10 provide—

11           “(A) standards and procedures for the  
12 classification and delineation of wetlands and  
13 procedures for administrative review of any  
14 such classification or delineation;

15           “(B) standards and procedures for the re-  
16 view of State or local land management plans  
17 and State programs for the regulation of wet-  
18 lands;

19           “(C) for the issuance of general permits,  
20 including programmatic, State, regional, and  
21 nationwide permits;

22           “(D) standards and procedures for the in-  
23 dividual permit applications under this section;

24           “(E) for enforcement of this section;

1           “(F) guidelines for the specification of  
2 sites for the disposal of dredged or fill material  
3 for navigational dredging;

4           “(G) standards and procedures that, to the  
5 maximum extent practicable and economically  
6 feasible, require the creation of wetlands and  
7 other environmentally beneficial uses of dredged  
8 or fill material associated with navigational  
9 dredging; and

10           “(H) any other rules and regulations that  
11 the Secretary deems necessary or appropriate to  
12 implement the requirements of this section.

13           “(2) NAVIGATIONAL DREDGING GUIDELINES.—  
14 Guidelines developed under paragraph (1)(F) shall—

15           “(A) be based upon criteria comparable to  
16 the criteria applicable to the territorial seas, the  
17 contiguous zone, and the oceans under section  
18 403(c); except that, in any case in which guide-  
19 lines based on such criteria alone would prohibit  
20 the specification of a disposal site, the economic  
21 impact on navigation and anchorage shall be  
22 considered; and

23           “(B) ensure that with respect to the issu-  
24 ance of permits under this section—

1           “(i) the least costly, environmentally  
2 acceptable disposal alternative will be se-  
3 lected, taking into consideration cost, exist-  
4 ing technology, short term and long term  
5 dredging requirements, and logistics;

6           “(ii) a disposal site will be specified  
7 after comparing reasonably available up-  
8 land, confined aquatic, beneficial use, and  
9 open water disposal alternatives on the  
10 basis of relative risk, environmental accept-  
11 ability, economics, practicability, and cur-  
12 rent technological feasibility;

13           “(iii) a disposal site will be specified  
14 after comparing the reasonably anticipated  
15 environmental and economic benefits of  
16 undertaking the underlying project to the  
17 status quo; and

18           “(iv) in comparing alternatives and  
19 selection of a disposal site, management  
20 measures may be considered and utilized to  
21 limit, to the extent practicable, adverse en-  
22 vironmental effects by employing suitable  
23 chemical, biological, or physical techniques  
24 to prevent unacceptable adverse impacts on  
25 the environment.

1           “(3) JUDICIAL REVIEW OF FINAL REGULA-  
2           TIONS.—Any judicial review of final regulations is-  
3           sued pursuant to this section and the Secretary’s de-  
4           nial of any petition for the issuance, amendment, or  
5           repeal of any regulation under this section shall be  
6           in accordance with sections 701 through 706 of title  
7           5 of the United States Code; except that a petition  
8           for review of action of the Secretary in issuing any  
9           regulation or requirement under this section or de-  
10          nying any petition for the issuance, amendment, or  
11          repeal of any regulation under this section may be  
12          filed only in the United States Court of Appeals for  
13          the District of Columbia, and such petition shall be  
14          filed within 90 days from the date of such issuance  
15          or denial or after such date if such petition for re-  
16          view is based solely on grounds arising after such  
17          ninetieth day. Action of the Secretary with respect  
18          to which review could have been obtained under this  
19          subsection shall not be subject to judicial review in  
20          civil or criminal proceedings for enforcement.

21           “(4) INTERIM REGULATIONS.—The Secretary  
22           shall, within 90 days after the date of the enactment  
23           of the Comprehensive Wetlands Conservation and  
24           Management Act of 1995, issue interim regulations  
25           consistent with this section to take effect imme-

1 diately. Notice of the interim regulations shall be  
2 published in the Federal Register, and such regula-  
3 tions shall be binding until the issuance of final reg-  
4 ulations pursuant to paragraph (1); except that the  
5 Secretary shall provide adequate procedures for  
6 waiver of any provisions of such interim regulations  
7 to avoid special hardship, inequity, or unfair dis-  
8 tribution of burdens or to advance the purposes  
9 of this section.

10 “(5) ADMINISTRATION BY SECRETARY.—Except  
11 where otherwise expressly provided in this section,  
12 the Secretary shall administer this section. The Sec-  
13 retary or any other Federal officer or agency in  
14 which any function under this section is vested or  
15 delegated is authorized to perform any and all acts  
16 (including appropriate enforcement activity), and to  
17 prescribe, issue, amend, or rescind such rules or or-  
18 ders as such officer or agency may find necessary or  
19 appropriate with this subsection, subject to the re-  
20 quirements of this subsection.

21 “(k) ENFORCEMENT.—

22 “(1) COMPLIANCE ORDER.—Whenever, on the  
23 basis of reliable and substantial information and  
24 after reasonable inquiry, the Secretary finds that  
25 any person is or may be in violation of this section



1 or of any condition or limitation set forth in a per-  
2 mit issued by the Secretary under this section, the  
3 Secretary shall issue an order requiring such persons  
4 to comply with this section or with such condition or  
5 limitation.

6 “(2) NOTICE AND OTHER PROCEDURAL RE-  
7 QUIREMENTS RELATING TO ORDERS.—A copy of any  
8 order issued under this subsection shall be sent im-  
9 mediately by the Secretary to the Governor of the  
10 State in which the violation occurs and the Gov-  
11 ernors of other affected States. The person commit-  
12 ting the asserted violation that results in issuance of  
13 the order shall be notified of the issuance of the  
14 order by personal service made to the appropriate  
15 person or corporate officer. The notice shall state  
16 with reasonable specificity the nature of the asserted  
17 violation and specify a time for compliance, not to  
18 exceed 30 days, which the Secretary determines is  
19 reasonable taking into account the seriousness of the  
20 asserted violation and any good faith efforts to com-  
21 ply with applicable requirements. If the person re-  
22 ceiving the notice disputes the Secretary’s deter-  
23 mination, the person may file an appeal as provided  
24 in subsection (i). Within 60 days of a decision which  
25 denies an appeal, or within 150 days from the date

1 of notification of violation by the Secretary if no ap-  
2 peal is filed, the Secretary shall prosecute a civil ac-  
3 tion in accordance with paragraph (3) or rescind  
4 such order and be estopped from any further en-  
5 forcement proceedings for the same asserted viola-  
6 tion.

7 “(3) CIVIL ACTION ENFORCEMENT.—The Sec-  
8 retary is authorized to commence a civil action for  
9 appropriate relief, including a permanent or tem-  
10 porary injunction, for any violation for which the  
11 Secretary is authorized to issue a compliance order  
12 under paragraph (1). Any action under this para-  
13 graph may be brought in the district court of the  
14 United States for the district in which the defendant  
15 is located or resides or is doing business, and such  
16 court shall have jurisdiction to restrain such viola-  
17 tion and to require compliance. Notice of the com-  
18 mencement of such action shall be given immediately  
19 to the appropriate State.

20 “(4) CIVIL PENALTIES.—Any person who vio-  
21 lates any condition or limitation in a permit issued  
22 by the Secretary under this section and any person  
23 who violates any order issued by the Secretary under  
24 paragraph (1) shall be subject to a civil penalty not  
25 to exceed \$25,000 per day for each violation com-

1 mencing on expiration of the compliance period if no  
2 appeal is filed or on the 30th day following the date  
3 of the denial of an appeal of such violation. The  
4 amount of the penalty imposed per day shall be in  
5 proportion to the scale or scope of the project. In de-  
6 termining the amount of a civil penalty, the court  
7 shall consider the seriousness of the violation or vio-  
8 lations, the economic benefit (if any) resulting from  
9 the violation, any history of such violations, any  
10 good-faith efforts to comply with the applicable re-  
11 quirements, the economic impact of the penalty on  
12 the violator, and such other matters as justice may  
13 require.

14 “(5) CRIMINAL PENALTIES.—If any person  
15 knowingly and willfully violates any condition or lim-  
16 itation in a permit issued by the Secretary under  
17 this section or knowingly and willfully violates an  
18 order issued by the Secretary under paragraph (1)  
19 and has been notified of the issuance of such order  
20 under paragraph (2) and if such violation has re-  
21 sulted in actual degradation of the environment,  
22 such person shall be punished by a fine of not less  
23 than \$5,000 nor more than \$50,000 per day of vio-  
24 lation, or by imprisonment for not more than 3  
25 years, or by both. If a conviction of a person is for

1 a violation committed after a first conviction of such  
2 person under this paragraph, punishment shall be by  
3 a fine of not more than \$100,000 per day of viola-  
4 tion, or imprisonment of not more than 6 years, or  
5 by both. An action for imposition of a criminal pen-  
6 alty under this paragraph may only be brought by  
7 the Attorney General.

8 “(I) STATE REGULATION.—

9 “(1) SUBMISSION OF PROPOSED STATE PRO-  
10 GRAM.—The Governor of any State desiring to ad-  
11 minister its own individual or general permit pro-  
12 gram for some or all of the activities covered by this  
13 section within any geographical region within its ju-  
14 risdiction may submit to the Secretary a description  
15 of the program it proposes to establish and admin-  
16 ister under State law or under an interstate com-  
17 pact. In addition, such State shall submit a state-  
18 ment from the chief legal officer in the case of the  
19 State or interstate agency, that the laws of such  
20 State, or the interstate compact, as the case may be,  
21 provide adequate authority to carry out the de-  
22 scribed program.

23 “(2) STATE AUTHORITIES REQUIRED FOR AP-  
24 PROVAL.—Not later than 1 year after the date of  
25 the receipt by the Secretary of a program and state-

1       ment submitted by any State under paragraph (1),  
2       the Secretary shall determine whether such State  
3       has the following authority with respect to the issu-  
4       ance of permits pursuant to such program—

5               “(A) to issue permits which—

6                       “(i) apply, and assure compliance  
7                       with, any applicable requirements of this  
8                       section; and

9                       “(ii) can be terminated or modified  
10                      for cause, including—

11                               “(I) violation of any condition of  
12                               the permit;

13                               “(II) obtaining a permit by mis-  
14                               representation, or failure to disclose  
15                               fully all relevant facts; or

16                               “(III) change in any condition  
17                               that requires either a temporary or  
18                               permanent reduction or elimination  
19                               of the permitted activity;

20               “(B) to issue permits which apply, and en-  
21               sure compliance with, all applicable require-  
22               ments of section 308 of this Act or to inspect,  
23               monitor, enter, and require reports to at least  
24               the same extent as required in section 308 of  
25               this Act;

1           “(C) to ensure that the public, and any  
2 other State the waters of which may be af-  
3 fected, receive notice of each application for a  
4 permit and to provide an opportunity for public  
5 hearing before a ruling on each such applica-  
6 tion;

7           “(D) to ensure that the Secretary receives  
8 notice of each application for a permit and that,  
9 prior to any action by the State, both the appli-  
10 cant for the permit and the State have received  
11 from the Secretary information with respect to  
12 any advance classification applicable to wet-  
13 lands that are the subject of such application;

14           “(E) to ensure that any State (other than  
15 the permitting State) whose waters may be af-  
16 fected by the issuance of a permit may submit  
17 written recommendation to the permitting State  
18 with respect to any permit application and, if  
19 any part of such written recommendations are  
20 not accepted by the permitting State, that the  
21 permitting State will notify such affected State  
22 (and the Secretary) in writing of its failure to  
23 so accept such recommendations together with  
24 its reasons for doing so; and

1           “(F) to abate violations of the permit or  
2           the permit program, including civil and criminal  
3           penalties and other ways and means of enforce-  
4           ment.

5           “(3) APPROVAL; RESUBMISSION.—If, with re-  
6           spect to a State program submitted under paragraph  
7           (1) of this section, the Secretary determines that the  
8           State—

9           “(A) has the authority set forth in para-  
10          graph (2), the Secretary shall approve the pro-  
11          gram and so notify such State and suspend the  
12          issuance of permits under subsection (b) for ac-  
13          tivities with respect to which a permit may be  
14          issued pursuant to the State program; or

15          “(B) does not have the authority set forth  
16          in paragraph (2) of this subsection, the Sec-  
17          retary shall so notify such State and provide a  
18          description of the revisions or modifications  
19          necessary so that the State may resubmit the  
20          program for a determination by the Secretary  
21          under this subsection.

22          “(4) EFFECT OF FAILURE OF SECRETARY TO  
23          MAKE TIMELY DECISION.—If the Secretary fails to  
24          make a determination with respect to any program  
25          submitted by a State under this subsection within 1

1 year after the date of receipt of the program, the  
2 program shall be treated as being approved pursuant  
3 to paragraph (3)(A) and the Secretary shall so no-  
4 tify the State and suspend the issuance of permits  
5 under subsection (b) for activities with respect to  
6 which a permit may be issued by the State.

7 “(5) TRANSFER OF PENDING APPLICATIONS  
8 FOR PERMITS.—If the Secretary approves a State  
9 permit program under paragraph (3)(A) or (4), the  
10 Secretary shall transfer any applications for permits  
11 pending before the Secretary for activities with re-  
12 spect to which a permit may be issued pursuant to  
13 the State program to the State for appropriate ac-  
14 tion.

15 “(6) GENERAL PERMITS.—Upon notification  
16 from a State with a permit program approved under  
17 this subsection that such State intends to administer  
18 and enforce the terms and conditions of a general  
19 permit issued by the Secretary under subsection (e)  
20 with respect to activities in the State to which such  
21 general permit applies, the Secretary shall suspend  
22 the administration and enforcement of such general  
23 permit with respect to such activities.

24 “(7) REVIEW BY SECRETARY.—Every 5 years  
25 after approval of a State administered program



1 under paragraph (3)(A), the Secretary shall review  
2 the program to determine whether it is being admin-  
3 istered in accordance with this section. If, on the  
4 basis of such review, the Secretary finds that a State  
5 is not administering its program in accordance with  
6 this section or if the Secretary determines based on  
7 clear and convincing evidence after a public hearing  
8 that a State is not administering its program in ac-  
9 cordance with this section and that substantial ad-  
10 verse impacts to wetlands or waters of the United  
11 States are imminent, the Secretary shall notify the  
12 State and, if appropriate corrective action is not  
13 taken within a reasonable time, not to exceed 90  
14 days after the date of the receipt of such notifica-  
15 tion, the Secretary shall—

16 “(A) withdraw approval of the program  
17 until the Secretary determines such corrective  
18 action has been taken; and

19 “(B) resume the program for the issuance  
20 of permits under subsections (b) and (e) for all  
21 activities with respect to which the State was is-  
22 suing permits until such time as the Secretary  
23 makes the determination described in para-  
24 graph (2) and the State again has an approved  
25 program.

1           “(8) TREATMENT OF EXISTING PROGRAMS.—  
2           Any State which has received approval to administer  
3           a program pursuant to this subsection before the  
4           date of the enactment of the Comprehensive Wet-  
5           lands Conservation and Management Act of 1995  
6           shall not be required to reapply for approval and  
7           shall be permitted to continue administering such  
8           program in a manner consistent with the provisions  
9           of this section. Upon receipt of a request from the  
10          Governor of such State, the Secretary, with the con-  
11          currence of the Governor, shall amend the program.

12          “(m) MISCELLANEOUS PROVISIONS.—

13               “(1) STATE AUTHORITY TO CONTROL DIS-  
14               CHARGES.—Nothing in this section shall preclude or  
15               deny the right of any State or interstate agency to  
16               control activities in waters within the jurisdiction of  
17               such State, including any activity of any Federal  
18               agency, and each such agency shall comply with  
19               such State or interstate requirements both sub-  
20               stantive and procedural to control such activities to  
21               the same extent that any person is subject to such  
22               requirements. This section shall not be construed as  
23               affecting or impairing the authority of the Secretary  
24               to maintain navigation.

1           “(2) AVAILABILITY TO PUBLIC.—A copy of each  
2 permit application and each permit issued under this  
3 section shall be available to the public. Such permit  
4 application or portion thereof shall further be avail-  
5 able on request for the purpose of reproduction.

6           “(3) PUBLICATION IN FEDERAL REGISTER.—  
7 The Secretary shall have published in the Federal  
8 Register all memoranda of agreement, regulatory  
9 guidance letters, and other guidance documents of  
10 general applicability to implementation of this sec-  
11 tion at the time they are distributed to agency re-  
12 gional or field offices. In addition, the Secretary  
13 shall prepare, update on a biennial basis and make  
14 available to the public for purchase at cost—

15           “(A) an indexed publication containing all  
16 Federal regulations, general permits, memo-  
17 randa of agreement, regulatory guidance letters,  
18 and other guidance documents relevant to the  
19 permitting of activities pursuant to this section;  
20 and

21           “(B) information to enable the general  
22 public to understand the delineation of wet-  
23 lands, the permitting requirements referred to  
24 in subsection (e), wetlands restoration and en-  
25 hancement, wetlands functions, available non-

1 regulatory programs to conserve and restore  
2 wetlands, and other matters that the Secretary  
3 considers relevant.

4 “(4) COMPLIANCE.—

5 “(A) COMPLIANCE WITH PERMIT.—Com-  
6 pliance with a permit issued pursuant to this  
7 section, including any activity carried out pur-  
8 suant to a general permit issued under this sec-  
9 tion, shall be deemed in compliance, for pur-  
10 poses of sections 309 and 505, with sections  
11 301, 307, and 403.

12 “(B) CRANBERRY PRODUCTION.—Activi-  
13 ties associated with expansion, improvement, or  
14 modification of existing cranberry production  
15 operations shall be deemed in compliance, for  
16 purposes of sections 309 and 505, with section  
17 301, if—

18 “(i) the activity does not result in the  
19 modification of more than 10 acres of wet-  
20 lands per operator per year and the modi-  
21 fied wetlands (other than where dikes and  
22 other necessary facilities are placed) re-  
23 main as wetlands or other waters of the  
24 United States; or

1                   “(ii) the activity is required by any  
2                   State or Federal water quality program.

3                   “(5) LIMITATION ON FEES.—Any fee charged  
4                   in connection with the delineation or classification of  
5                   wetlands, the submission or processing of an applica-  
6                   tion for a permit authorizing an activity in wetlands  
7                   or waters of the United States, or any other action  
8                   taken in compliance with the requirements of this  
9                   section (other than fines for violations under sub-  
10                  section (k)) shall not exceed the amount in effect for  
11                  such fee on February 15, 1995.

12                  “(6) BALANCED IMPLEMENTATION.—

13                  “(A) IN GENERAL.—In implementing his  
14                  or her responsibilities under the regulatory pro-  
15                  gram under this section, the Secretary shall  
16                  balance the objective of conserving functioning  
17                  wetlands with the objective of ensuring contin-  
18                  ued economic growth, providing essential infra-  
19                  structure, maintaining strong State and local  
20                  tax bases, and protecting against the diminish-  
21                  ment of the use and value of privately owned  
22                  property.

23                  “(B) MINIMIZATION OF ADVERSE EFFECTS  
24                  ON PRIVATE PROPERTY.—In carrying out this  
25                  section, the Secretary and the heads of all other

1 Federal agencies shall seek in all actions to  
2 minimize the adverse effects of the regulatory  
3 program under this section on the use and  
4 value of privately owned property.

5 “(7) PROCEDURES FOR EMERGENCIES.—The  
6 Secretary shall develop procedures for facilitating ac-  
7 tions under this section that are necessary to re-  
8 spond to emergency conditions (including flood  
9 events and other emergency situations) which may  
10 involve loss of life and property damage. Such proce-  
11 dures shall address circumstances requiring expe-  
12 dited approvals as well as circumstances requiring  
13 no formal approval under this section.

14 “(8) USE OF PROPERTY.—For purposes of this  
15 section, a use of property is limited by an agency ac-  
16 tion if a particular legal right to use that property  
17 no longer exists because of the action.

18 “(9) TRANSITION RULES.—

19 “(A) PERMIT REQUIRED.—After the effec-  
20 tive date of this section under section 806 of  
21 the Comprehensive Wetlands Conservation and  
22 Management Act of 1995, no permit for any ac-  
23 tivity in wetlands or waters of the United  
24 States may be issued except in accordance with  
25 this section. Any application for a permit for

1 such an activity pending under this section on  
2 such effective date shall be deemed to be an ap-  
3 plication for a permit under this section.

4 “(B) PRIOR PERMITS.—Any permit for an  
5 activity in wetlands or waters of the United  
6 States issued under this section prior to the ef-  
7 fective date referred to in subparagraph (A)  
8 shall be deemed to be a permit under this sec-  
9 tion and shall continue in force and effect for  
10 the term of the permit unless revoked, modified,  
11 suspended, or canceled in accordance with this  
12 section.

13 “(C) REEVALUATION.—

14 “(i) PETITION.—Any person holding a  
15 permit for an activity in wetlands or water  
16 of the United States on the effective date  
17 referred to in subparagraph (A) may peti-  
18 tion, after such effective date, the Sec-  
19 retary for reevaluation of any decision  
20 made before such effective date concerning  
21 (I) a determination of regulatory jurisdic-  
22 tion under this section, or (II) any condi-  
23 tion imposed under the permit. Upon re-  
24 ceipt of a petition for reevaluation, the  
25 Secretary shall conduct the reevaluation in

1           accordance with the provisions of this sec-  
2           tion.

3           “(ii) MODIFICATION OF PERMIT.—If  
4           the Secretary finds that the provisions of  
5           this section apply with respect to activities  
6           and lands which are subject to the permit,  
7           the Secretary shall modify, revoke, sus-  
8           pend, cancel, or continue the permit as ap-  
9           propriate in accordance with the provisions  
10          of this section; except that no compensa-  
11          tion shall be awarded under this section to  
12          any person as a result of reevaluation pur-  
13          suant to this subparagraph and, if the per-  
14          mit covers activities in type A wetlands,  
15          the permit shall continue in effect without  
16          modification.

17          “(iii) PROCEDURE.—The reevaluation  
18          shall be carried out in accordance with  
19          time limits set forth in subsection (e)(5)  
20          and shall be subject to administrative ap-  
21          peal under subsection (i).

22          “(D) PREVIOUSLY DENIED PERMITS.—No  
23          permit shall be issued under this section, no ex-  
24          emption shall be available under subsection (f),  
25          and no exception shall be available under sub-



1 section (g)(1)(B), for any activity for which a  
2 permit has previously been denied by the Sec-  
3 retary on more than one occasion unless such  
4 activity—

5 “(i) has been approved by the affected  
6 State, county, and local government within  
7 the boundaries of which the activity is pro-  
8 posed;

9 “(ii) in the case of unincorporated  
10 land, has been approved by all local gov-  
11 ernments within 1 mile of the proposed ac-  
12 tivity; and

13 “(iii) would result in a net improve-  
14 ment to water quality at the site of such  
15 activity.

16 “(10) CERTIFICATION.—Notwithstanding any  
17 other provision of this Act, the Administrator shall  
18 not, either directly or indirectly, impose any require-  
19 ment or condition in a certification required under  
20 section 401 that the Secretary determines is incon-  
21 sistent with the provisions of this section.

22 “(11) DEFINITIONS.—In this section the follow-  
23 ing definitions apply:

24 “(A) ACTIVITY IN WETLANDS OR WATERS  
25 OF THE UNITED STATES.—The term ‘activity in

1 wetlands or waters of the United States’  
2 means—

3 “(i) the discharge of dredged or fill  
4 material into waters of the United States,  
5 including wetlands at a specific disposal  
6 site; or

7 “(ii) the draining, channelization, or  
8 excavation of wetlands.

9 “(B) AGENCY.—The term ‘agency’ has the  
10 meaning given that term in section 551 of title  
11 5, United States Code.

12 “(C) AGENCY ACTION.—The term ‘agency  
13 action’ has the meaning given that term in sec-  
14 tion 551 of title 5, United States Code, but also  
15 includes the making of a grant to a public au-  
16 thority conditioned upon an action by the recip-  
17 ient that would constitute a limitation if done  
18 directly by the agency.

19 “(D) AGRICULTURAL LAND.—The term  
20 ‘agricultural land’ means cropland, pastureland,  
21 native pasture, rangeland, an orchard, a vine-  
22 yard, nonindustrial forest land, an area that  
23 supports a water dependent crop (including  
24 cranberries, taro, watercress, or rice), and any  
25 other land used to produce or support the pro-

1           duction of an annual or perennial crop (includ-  
2           ing forage or hay), aquaculture product, nurs-  
3           ery product, or wetland crop or the production  
4           of livestock.

5           “(E) CONSERVED WETLANDS.—The term  
6           ‘conserved wetlands’ means wetlands that are  
7           located in the National Park System, National  
8           Wildlife Refuge System, National Wilderness  
9           System, the Wild and Scenic River System, and  
10          other similar Federal conservation systems,  
11          combined with wetlands located in comparable  
12          types of conservation systems established under  
13          State and local authority within State and local  
14          land use systems.

15          “(F) ECONOMIC BASE LANDS.—The term  
16          ‘economic base lands’ means lands conveyed to,  
17          selected by, or owned by Alaska Native entities  
18          pursuant to the Alaska Native Claims Settle-  
19          ment Act, Public Law 92–203 or the Alaska  
20          Native Allotment Act of 1906 (34 Stat. 197),  
21          and lands conveyed to, selected by, or owned by  
22          the State of Alaska pursuant to the Alaska  
23          Statehood Act, Public Law 85–508.

24          “(G) FAIR MARKET VALUE.—The term  
25          ‘fair market value’ means the most probable

1 price at which property would change hands, in  
2 a competitive and open market under all condi-  
3 tions requisite to a fair sale, between a willing  
4 buyer and a willing seller, neither being under  
5 any compulsion to buy or sell and both having  
6 reasonable knowledge of relevant facts, at the  
7 time the agency action occurs.

8 “(H) LAW OF A STATE.—The term ‘law of  
9 a State’ includes the law of a political subdivi-  
10 sion of a State.

11 “(I) MITIGATION BANK.—The term ‘miti-  
12 gation bank’ means a wetlands restoration, cre-  
13 ation, enhancement, or preservation project un-  
14 dertaken by one or more parties, including pri-  
15 vate and public entities, expressly for the pur-  
16 pose of providing mitigation compensation cred-  
17 its to offset adverse impacts to wetlands or  
18 other waters of the United States authorized by  
19 the terms of permits allowing activities in such  
20 wetlands or waters.

21 “(J) NAVIGATIONAL DREDGING.—The  
22 term ‘navigational dredging’ means the dredg-  
23 ing of ports, waterways, and inland harbors, in-  
24 cluding berthing areas and local access channels  
25 appurtenant to a Federal navigation channel.

1           “(K) PROPERTY.—The term ‘property’  
2 means land and includes the right to use or re-  
3 ceive water.

4           “(L) SECRETARY.—The term ‘Secretary’  
5 means the Secretary of the Army.

6           “(M) STATE WITH SUBSTANTIAL CON-  
7 SERVED WETLANDS AREAS.—The term ‘State  
8 with substantial conserved wetlands areas’  
9 means any State which—

10           “(i) contains at least 10 areas of wet-  
11 lands for each acre of wetlands filled,  
12 drained, or otherwise converted within such  
13 State (based upon wetlands loss statistics  
14 reported in the 1990 United States Fish  
15 and Wildlife Service Wetlands Trends re-  
16 port to Congress entitled ‘Wetlands Losses  
17 in the United States 1780’s to 1980’s’); or

18           “(ii) the Secretary of the Army deter-  
19 mines has sufficient conserved wetlands  
20 areas to provided adequate wetlands con-  
21 servation in such State, based on the poli-  
22 cies set forth in this Act.

23           “(N) VERNAL POOLS.—The term ‘vernal  
24 pools’ means individual isolated wetlands that

1 have exceptional waterfowl habitat functions  
2 and that exhibit the following characteristics:

3 “(i) an area greater than 1/2 acre;

4 “(ii) seasonal standing for no less  
5 than 45 consecutive days during the fall  
6 and winter in an average precipitation sea-  
7 son;

8 “(iii) an impermeable subsurface hard  
9 pan soil layer that prevents subsurface  
10 water drainage or percolation; and

11 “(iv) a surface outlet for relief of  
12 water flow.

13 “(O) WETLANDS.—The term ‘wetlands’  
14 means those lands that meet the criteria for de-  
15 lineation of lands as wetlands set forth in sub-  
16 section (g).”.

17 **SEC. 804. DEFINITIONS.**

18 Section 502 (33 U.S.C. 1362) is further amended—

19 (1) in paragraph (6)—

20 (A) by striking “dredged spoil,”;

21 (B) by striking “or (B)” and inserting  
22 “(B)”; and

23 (C) by inserting before the period at the  
24 end “; and (C) dredged or fill material”; and

1           (2) by adding at the end thereof the following  
2           new paragraphs:

3           “(28) The term ‘wetlands’ means lands which have  
4 a predominance of hydric soils and which are inundated  
5 by surface water at a frequency and duration sufficient  
6 to support, and that under normal circumstances do sup-  
7 port, a prevalence of vegetation typically adapted for life  
8 in saturated soil conditions. Wetlands generally include  
9 swamps, marshes, bogs, and similar areas.

10          “(29) The term ‘creation of wetlands’ means an activ-  
11 ity that brings a wetland into existence at a site where  
12 it did not formerly occur for the purpose of compensatory  
13 mitigation.

14          “(30) The term ‘enhancement of wetlands’ means any  
15 activity that increases the value of one or more functions  
16 in existing wetlands.

17          “(31) The term ‘farmed wetland’ means those agri-  
18 cultural lands, as defined in section 404, and associated  
19 nonagricultural lands exhibiting wetlands characteristics,  
20 as delineated solely by the Secretary of Agriculture.

21          “(32) The term ‘fastlands’ means lands located be-  
22 hind legally constituted man-made structures or natural  
23 formations, such as levees constructed and maintained to  
24 permit the utilization of such lands for commercial, indus-

1 trial, or residential purposes consistent with local land use  
2 planning requirements.

3 “(33) The term ‘wetlands functions’ means the roles  
4 wetlands serve, including flood water storage, flood water  
5 conveyance, ground water recharge, erosion control, wave  
6 attenuation, water quality protection, scenic and aesthetic  
7 use, food chain support, fisheries, wetlands plant habitat,  
8 aquatic habitat, and habitat for wetland dependent wild-  
9 life.

10 “(34) The term ‘growing season’ means, for each  
11 plant hardiness zone, the period between the average date  
12 of last frost in spring and the average date of first frost  
13 in autumn.

14 “(35) The term ‘incidentally created wetlands’ means  
15 lands that exhibit wetlands characteristics sufficient to  
16 meet the criteria for delineation of wetlands, where one  
17 or more of such characteristics is the unintended result  
18 of human induced alterations of hydrology.

19 “(36) The term ‘maintenance’ when used in reference  
20 to wetlands means activities undertaken to assure continu-  
21 ation of a wetland or the accomplishment of project goals  
22 after a restoration or creation project has been technically  
23 completed, including water level manipulations and control  
24 of nonnative plant species.



1       “(37) The term ‘mitigation banking’ means wetlands  
2 restoration, enhancement, preservation or creation for the  
3 purpose of providing compensation for wetland degrada-  
4 tion or loss.

5       “(38) The term ‘normal farming, silviculture, aqua-  
6 culture and ranching activities’ means normal practices  
7 identified as such by the Secretary of Agriculture, in con-  
8 sultation with the Cooperative Extension Service for each  
9 State and the land grant university system and agricul-  
10 tural colleges of the State, taking into account existing  
11 practices and such other practices as may be identified  
12 in consultation with the affected industry or community.

13       “(39) The term ‘restoration’ in reference to wetlands  
14 means an activity undertaken to return a wetland from  
15 a disturbed or altered condition with lesser acreage or  
16 fewer functions to a previous condition with greater wet-  
17 lands acreage or functions.

18       “(40) The term ‘temporary impact’ means the dis-  
19 turbance or alteration of wetlands caused by activities  
20 under circumstances in which, within 3 years following the  
21 commencement of such activities, such wetlands—

22               “(A) are returned to the conditions in existence  
23 prior to the commencement of such activity; or

24               “(B) display conditions sufficient to ensure,  
25 that without further human action, such wetlands

1 will return to the conditions in existence prior to the  
2 commencement of such activity.

3 “(41) The term ‘airport hazard’ has the meaning  
4 such term has under section 47102 of title 49, United  
5 States Code.”.

6 **SEC. 805. TECHNICAL AND CONFORMING AMENDMENTS.**

7 (a) VIOLATION.—Section 301(a) (33 U.S.C. 1311(a))  
8 is amended—

9 (1) by striking “402, and 404” and inserting  
10 “and 402”; and

11 (2) by adding at the end the following: “Except  
12 as in compliance with this section and section 404,  
13 the undertaking of any activity in wetlands or waters  
14 of the United States shall be unlawful.”.

15 (b) FEDERAL ENFORCEMENT.—Section 309 (33  
16 U.S.C. 1319) is amended—

17 (1) in subsection (a)(1) by striking “or 404”;

18 (2) in subsection (a)(3) by striking “or in a  
19 permit issued under section 404 of this Act by a  
20 State”;

21 (3) in each of subsections (c)(1)(A) and  
22 (c)(2)(A) by striking “or in a permit” and all that  
23 follows through “State;” and inserting a semicolon;

1 (4) in subsection (c)(3)(A) by striking “or in a  
2 permit” and all that follows through “State, and”  
3 and inserting “and”;

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

6 “(8) TREATMENT OF CERTAIN VIOLATIONS.—  
7 Any person who violates section 301 with respect to  
8 an activity in wetlands or waters of the United  
9 States for which a permit is required under section  
10 404 shall not be subject to punishment under this  
11 subsection but shall be subject to punishment under  
12 section 404(k)(5).”;

13 (6) in subsection (d) by striking “, or in a per-  
14 mit issued under section 404 of this Act by a  
15 State,”;

16 (7) by adding at the end of subsection (d) the  
17 following: “Any person who violates section 301 with  
18 respect to an activity in wetlands or waters of the  
19 United States for which a permit is required under  
20 section 404 shall not be subject to a civil penalty  
21 under this subsection but shall be subject to a civil  
22 penalty under section 404(k)(4).”;

23 (8) in subsection (g)(1)—

24 (A) by striking “—” and all that follows  
25 through “(A)”;

1 (B) by striking “or in a permit issued  
2 under section 404 by a State, or”; and

3 (C) by striking “(B)” and all that follows  
4 through “as the case may be,” and inserting  
5 “the Administrator”;

6 (9) by adding at the end of subsection (g) the  
7 following:

8 “(12) TREATMENT OF CERTAIN VIOLATIONS.—  
9 Any person who violates section 301 with respect to  
10 an activity in wetlands or waters of the United  
11 States for which a permit is required under section  
12 404 shall not be subject to assessment of a civil pen-  
13 alty under this subsection but shall be subject to as-  
14 sessment of a civil penalty under section  
15 404(k)(4).”;

16 (10) by striking “or Secretary”, “or the Sec-  
17 retary”, “or the Secretary, as the case may be,” “or  
18 Secretary’s”, and “and the Secretary” each place  
19 they appear; and

20 (11) in subsection (g)(9)(B) by inserting a  
21 comma after “Administrator”.

22 **SEC. 806. EFFECTIVE DATE.**

23 This title, including the amendments made by this  
24 title, shall take effect on the 90th day following the date  
25 of the enactment of this Act.

1           **TITLE IX—NAVIGATIONAL**  
2                           **DREDGING**

3 **SEC. 901. REFERENCES TO ACT.**

4           Except as otherwise expressly provided, whenever in  
5 this title an amendment or repeal is expressed in terms  
6 of an amendment to, or repeal of, a section or other provi-  
7 sion, the reference shall be considered to be made to a  
8 section or other provision of the Marine Protection, Re-  
9 search, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et  
10 seq.).

11 **SEC. 902. ENVIRONMENTAL PROTECTION AGENCY PER-**  
12                           **MITTS.**

13           Section 102(c) (33 U.S.C. 1412(c)) is amended—

14                   (1) in the first sentence of paragraph (3) by  
15           striking “the Administrator, in conjunction with the  
16           Secretary,” and inserting “the Secretary, in conjunc-  
17           tion with the Administrator,”; and

18                   (2) in the second sentence of paragraph (3) by  
19           striking “the Administrator and the Secretary” and  
20           inserting “the Secretary and the Administrator”.

21 **SEC. 903. CORPS OF ENGINEERS PERMITS.**

22           (a) DISPOSAL SITES.—Section 103(b) (33 U.S.C.  
23 1413(b)) is amended—

1 (1) in the matter preceding paragraph (1) by  
2 striking “, with the concurrence of the Adminis-  
3 trator,”; and

4 (2) in paragraph (3) by striking “Adminis-  
5 trator” and inserting “Secretary”.

6 (b) CONSULTATION WITH THE ADMINISTRATOR.—  
7 Section 103(c) (33 U.S.C. 1413(c)) is amended to read  
8 as follows:

9 “(c) CONSULTATION WITH THE ADMINISTRATOR.—  
10 Prior to issuing a permit to any person under this section,  
11 the Secretary shall first consult with the Administrator.”.

12 **SEC. 904. PENALTIES.**

13 Section 105 (33 U.S.C. 1415) is amended—

14 (1) in the first sentence by inserting “or, with  
15 respect to violations of section 103, the Secretary”  
16 before the period at the end;

17 (2) in the fourth, fifth, and sixth sentences by  
18 inserting “or the Secretary, as the case may be,”  
19 after “Administrator” each place it appears; and

20 (3) in subsection (g)(2)(C) by inserting “or the  
21 Secretary, as the case may be,” after “the Adminis-  
22 trator” the first place it appears.

23 **SEC. 905. ANNUAL REPORT.**

24 Section 112 (33 U.S.C. 1421) is amended by striking  
25 “with the concurrence of the Administrator”.

1 **SEC. 906. REFERENCE TO COMMITTEE.**

2 Section 104(i)(3) (33 U.S.C. 1414(i)(3)) is amended  
3 by striking “Merchant Marine and Fisheries” and insert-  
4 ing “Transportation and Infrastructure”.

5 **TITLE X—ADDITIONAL**  
6 **PROVISIONS**

7 **SEC. 1001. COASTAL NONPOINT POLLUTION CONTROL.**

8 (a) IN GENERAL.—Section 6217(a)(1) of the Coastal  
9 Zone Act Reauthorization Amendments of 1990 (16  
10 U.S.C. 1451 note) is amended—

11 (1) by striking “shall” the first place it appears  
12 and inserting “may”;

13 (2) by striking “the Secretary and”; and

14 (3) by inserting after the first sentence the fol-  
15 lowing: “Notwithstanding the preceding sentence, if  
16 the Administrator determines, in consultation with  
17 the State, such program is needed to supplement the  
18 program under section 319 of the Federal Water  
19 Pollution Control Act as it relates to the coastal  
20 zone, the State shall prepare and submit such pro-  
21 gram.”.

22 (b) PROGRAM SUBMISSION, APPROVAL, AND IMPLE-  
23 MENTATION.—Section 6217(c) of such Act is amended—

24 (1) in paragraph (1)—

1 (A) by striking “the Secretary and the Ad-  
2 ministrator shall jointly” and inserting “the  
3 Administrator shall”; and

4 (B) by striking “The program” and all  
5 that follows through the period at the end of  
6 the paragraph and inserting “The program  
7 shall be approved if the Administrator deter-  
8 mines that the program meets the requirements  
9 of this section.”; and

10 (2) in paragraph (3)—

11 (A) by striking “If the Secretary” and in-  
12 serting “If the Administrator”;

13 (B) by striking “the Secretary shall with-  
14 hold” and inserting “the Administrator shall di-  
15 rect the Secretary to withhold”; and

16 (C) by striking “The Secretary shall  
17 make” and inserting “The Administrator shall  
18 direct the Secretary to make”.

19 (c) FINANCIAL ASSISTANCE.—Section 6217(f) of  
20 such Act is amended—

21 (1) in paragraph (1)—

22 (A) by striking “the Secretary, in consulta-  
23 tion with the Administrator,” and inserting  
24 “the Administrator”; and



1 (B) by inserting “and implementing” after  
2 “developing”;

3 (2) in paragraph (2) by inserting “and imple-  
4 menting” after “developing”; and

5 (3) in paragraph (4)—

6 (A) by striking “the Secretary” each place  
7 it appears and inserting “the Administrator”;

8 (B) by striking “, in consultation with the  
9 Administrator,”; and

10 (C) by inserting “and implementing” after  
11 “preparing”.

12 (d) AUTHORIZATION OF APPROPRIATIONS.—Section  
13 6217(h)(2) of such Act is amended—

14 (1) in subparagraph (A) by striking “, other  
15 than for providing in the form of grants under sub-  
16 section (f)”; and

17 (2) in subparagraph (B) by striking “the Sec-  
18 retary” and inserting “the Administrator”.

Passed the House of Representatives May 16, 1995.

Attest:

*Clerk.*

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

**H.R. 961**

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**AN ACT**

To amend the Federal Water Pollution Control Act.