That is our mission, Mr. Speaker, not to meet an arbitrary deadline, but to balance the Federal budget. It demands on entitlements. It demands change—now.

By the early 21st century—a few years from now—the entire Federal budget will be consumed by entitlement spending and interest on the national debt. That is the shocking conclusion of the President’s own commission on entitlements. It demands change—now.

Republicans are committed to capping the growth of Federal spending and cutting waste in the Federal budget, not to meet an arbitrary deadline, but for the sake of our children and our country. That is our mission, Mr. President. We will accomplish it.

AMERICA NEEDS A NATIONAL CLEAN AIR ACT

We need a national Clean Air Act to protect our children, sensitive to senior citizens, and the elderly. It is about whether or not we will leave our children in utter bankruptcy or with the hope of a better tomorrow. Either we tame the debt monster that ravaging our capacity for economic survival, or the very concept of prosperity will, for most of our children, be little more than a wistful memory.

The reason is very simple: moving the Federal budget into balance is not, ultimately, a debate about numbers, programs, agencies or interest groups. It is a debate about the future of our country. It is about whether or not we will leave our children in utter bankruptcy or with the hope of a better tomorrow. Either we tame the debt monster that is ravaging our capacity for economic survival, or the very concept of prosperity will, for most of our children, be little more than a wistful memory.

By the early 21st century—a few years from now—the entire Federal budget will be consumed by entitlement spending and interest on the national debt. That is the shocking conclusion of the President’s own commission on entitlements. It demands change—now.

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WHERE IS THE DEMOCRAT PLAN TO BALANCE THE BUDGET?

Mr. HEFFLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.

Mr. HEFFLEY. Mr. Speaker, I never cease to be amazed at the speed with which liberal Democrats are able to rattle off class warfare rhetoric. It is as if liberal Democrats get up every morning and drink a specially concocted bromide which enables them to spew forth class warfare epithets with machine-gun-like rapidity.

The most recent example was yesterday when Republicans offered our plan to balance the Federal budget in 7 years.

But what was the response from the liberals? Well, they just about tripped over themselves to get to the floor to denounce our plan as a devious plot to benefit the rich at the expense of children, the elderly, and the poor.

Mr. Speaker, the liberals are not fooling anyone. Even President Clinton’s own Cabinet members admit that Medicare is going broke. And nobody denies the existence of the national debt.

But what have the liberal Democrats offered? Nothing but a few well-rehearsed class warfare epithets.

I only have one question for my friends on the other side. You know the problems we face—where is your plan? Where is it?

DEMOCRATS WILL NOT BALANCE THE BUDGET ON THE BACKS OF SENIORS OR THE POOR

Mr. GENE GREEN of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.

Mr. GENE GREEN of Texas. Mr. Speaker, the new Republican majority has shown great courage and guts, as we heard from another speaker, to cut and balance the budget. They are balancing their budget by making significant cuts in Medicare, the cost of living for Social Security, education funds, and job training funds. That takes a lot of guts and courage to pick on the least fortunate of our society.

The Republican majority call their drastic budget cuts in Medicare slow growth. Either way, it is less money for the next 7 years than expected for the growth in senior citizens, so it is a cut, whether we call it that or not. Medicare is not a bank to be raided by the Republicans, just because they want to pay for a tax cut.

The Republican majority also changes the way the Consumer Price Index is calculated, ultimately cutting the COLA’s for seniors. I thought our new leadership told us Social Security would be sacred.

I want everyone in Congress to know that Democrats want to work with Republicans, but we refuse to balance the budget on the backs of Medicare, on the backs of cost of living for seniors, or education funding, or the least fortunate of our society.

REPUBLICANS WILL WORK TO PRESERVE AND PROTECT MEDICARE

Mr. FOX of Pennsylvania asked and was given permission to address the House for 1 minute and to revise and extend his remarks.

Mr. FOX of Pennsylvania. Mr. Speaker, according to the President’s Commission on Entitlements, in about a decade all Federal revenues will be consumed by entitlements and interest on the debt. At that point, the Federal Government will cease to exist as we know it: no defense, no law enforcement, no education, no anything outside of entitlements and debt service.

The fact is, there is a problem with Medicare. By the year 2002, the funds will be out completely. What do we do about that? We can work together, Republicans and Democrats together, to make sure that we help our seniors, to make sure that Medicare is sound and safe and protected.

The fact is, the Republicans do have a plan. We will be presenting it. We do expect to have the American people embrace it, because it is one that is sensitive to families, sensitive to our children, sensitive to senior citizens, and one that will provide the kind of health care that Americans have come to expect. The fact is, Republicans will lead the way to protect, preserve, and to protect Medicare, and to work with senior citizen organizations and their families to make sure that Medicare is protected. We guarantee that. We will work on it every day. So help me God, it will be accomplished.

CLEAN WATER AMENDMENTS OF 1995

The SPEAKER pro tempore (Mr. FOLEY). Pursuant to House Resolution 140 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 961.

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 961 (Mr. BOEHLERT) to amend the Federal Water Pollution Control Act, with Mr. HOBBON (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Wednesday, May 10, 1995, the amendment offered by the gentleman from New York [Mr. BOEHLERT] had been disposed of, and
title III was open to amendment at any point.

Are there further amendments to title III?

AMENDMENTS OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I offer 2 amendments, and I ask unanimous consent that the amendments, one in title III and one in title V, be considered reported.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN pro tempore. The Clerk will report the amendments. The Clerk read as follows:

Amendments offered by Mr. TRAFICANT: Page 35, after line 23, insert the following:

``(2) LIMITATION AND NOTICE.—If the Administrator or a State extends the deadline for point source compliance and encourages the development and use of an innovative pollution prevention technology under paragraph (1), the Administrator or State shall encourage, to the maximum extent practicable, the use of technology produced in the United States. That would encourage more technology development in our country to deal with these issues. It has been worked out. The second amendment is a standard "Buy American" amendment.

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Chairman, I thank the gentleman and yield to me. We have reviewed these, and we think these are good amendments. We support them.

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from California.

Mr. MINETA. Mr. Chairman, I have no reason to object to the amendments offered by the gentleman from Ohio. Mr. TRAFICANT. With that, Mr. Chairman, I urge a vote in favor of the amendments.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. The amendments were agreed to.

The CHAIRMAN. Are there other amendments to title III of the bill?

AMENDMENT OFFERED BY MR. PALLONE

Mr. PALLONE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. PALLONE: Strike title IX of the bill (pages 323 through 336).

Mr. PALLONE. Mr. Chairman, my amendment would strike provisions of the bill which authorize waivers of secondary treatment requirements for sewage treatment plants in certain coastal communities which discharge into ocean waters.

There are two major steps to wastewater treatment which I think many of us know. One is the physical primary treatment, which is the removal of suspended solids. The second is the biological or secondary treatment, which is the removal of dissolved waste by bacteria.

Secondary treatment, in my opinion, is very important, because it is critical to the removal of organic material from sewage. It is the material linked to diphtheria and gastroenteritis for swimmers. It is also the common denominator. Secondary treatment sets a base level of treatment that all must achieve, putting all facilities on equal footing.

There are two dozen other facilities that it could apply. Also, communities under 10,000 are now eligible for permits, and there are about 6,500 facilities of 63 percent of all facilities that could be eligible under this under 10,000 provision. Soon Puerto Rico may also be able to apply for a waiver of secondary treatment because of the legislation the committee marked.

I think that this is a terrible development. I would like to know what is next. What other waivers and weakening amendments are we going to see in the Clean Water Act?

Ultimately, if we proceed down this slippery slope, secondary treatment may in fact disappear in many parts of the country. Secondary treatment may be costly, but it will cost more to clean it up at all.

The ultimate problem I have, and I am thinking to correct with this amendment, is this idea that somehow the ocean is out of sight, out of mind, that is, a sort of endless sink that we can continue to dump material in. It is not true. The material comes back and ocean water quality continues to deteriorate.

Please do not gut the Clean Water Act. Let us not start down the slippery slope of allowing ocean discharge without secondary treatment, and please support this amendment.

Mr. SHUSTER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this amendment strikes all of the secondary treatment
provisions in the bill. During the debate on the unfunded mandates, sec-
dary treatment was cited as one of the most costly unfunded mandates to States and localities.

Our bill provides relief from this mandate, but it provides relief only where it is also an unfunded mandate. Our bill allows a waiver of secondary treatment for deep ocean discharges, but only where secondary treatment provides no environmental benefit.

Let me emphasize that. We allow for a waiver of secondary treatment for deep ocean benefits but only when secondary treatment provides no environmental benefit.

This waiver must be approved by either the State water quality authority or by the EPA, so this is not some willy-nilly waiver that a locality can give itself. It must go through the rigorous procedure of first showing that by getting the waiver, they are providing no environmental benefit, and, second, getting the approval of the EPA or the State.

The bill also allows certain alternative wastewater treatment technologies for small cities to be deemed secondary treatment if, and this is a big if, it will contribute to the attainment of water quality standards.

This flexibility, Mr. Chairman, is badly needed because traditional centralized municipal wastewater treatment systems do not always make economic sense to small communities. We need that flexibility for the States and to EPA to allow the use of alternatives, for example, like constructed wetlands or lagoons, where they make both economic and environmental sense.

Perhaps the most egregious example of the problems we would face if we were to adopt this amendment is the situation in San Diego to spend $3 billion on secondary treatment facilities when indeed the California EPA and the National Academy of Sciences says it is not. This flexibility is needed not only for San Diego but for many of the cities across America.

I strongly urge defeat of this amendment.

Mr. MINETA. Mr. Chairman, I rise in support of the amendment.

(Mr. MINETA asked and was given permission to revise and extend his remarks.)

Mr. MINETA. Mr. Chairman, the idea of waiving secondary treatment standards sounds alarms because the successes of the Clean Water Act over the past 23 years are attributable in large part to the act’s requirements for a baseline level of treatment—secondary treatment, in the case of municipal dischargers.

There are several reasons that these waivers should be stricken from the bill: First, they are not based on sound science; second, they threaten to degrade water quality and devastate the shoreline; third, they are unfair; and, fourth, they are unnecessary.

Several of the bill’s secondary waiver provisions abandon the basic requirement that the applicant demonstrate that a waiver will not harm the marine environment. The bill abandons this requirement, even though it makes sense, and has been met by more than 40 communities that have obtained waivers.

This congressional waiver of scientific standards is at direct odds with the themes of sound science and risk analysis that were embraced in the Contract With America. The consequences could be devastating to the environment.

HARMFUL TO WATER QUALITY AND THE MARINE ENVIRONMENT

For example, the secondary waiver provision intended for Los Angeles provides for waivers if the discharge is a mere 1 mile offshore, and 150 feet deep. Unfortunately, history has taught us that sewage discharges at about 1 mile offshore can wreak havoc.

In 1992, San Diego’s sewage pipe ruptured two-thirds of a mile offshore, and raw sewage containing coliform and other bacteria and viruses, and closing more than 4 miles of beaches. This environmental disaster happened just one-third of a mile closer to shore than the 1-mile offshore standard for municipal discharges under one of the waivers in this bill.

In addition, it appears that this waiver provision, although intended for Los Angeles, picks up at least 19 other cities as well. And, the waiver for small communities makes thousands more communities eligible for waivers, even though many of them are already meeting secondary requirements and could seek to reduce current treatment under this provision.

Since the number of waivers authorized under this bill is potentially quite large, the environmental impact also can be expected to be substantial, particularly for waste discharged just 1 mile from shore.

The San Diego and Los Angeles provisions both provide for enhanced primary treatment in place of secondary. We would think for a minute about what primary treatment is. It is not really treatment at all—you just get the biggest solids out by screening or settling, and the rest goes through raw, untreated. Chemically enhanced primary means you add a little chlorine to the raw sewage before discharging it.

This means that even when the system is operating properly—without any breaks in the pipe spewing sewage onto our beaches—the bill could result in essentially raw human waste being dumped a mile out from our beaches. Most Californians do not want essentially raw sewage dumped 1 mile from their beaches.

The waiver provisions are unfair because they grant preferential treatment to select communities. This fa-

vornism has direct consequences for the thousands of communities that are represented by the cities that have spent 18 years fighting to clean up the pollution in San Diego County, it concerns me when my colleague from California speaks of the pollution problems in San Diego, when in fact we can recognize that one of the major problems we have had is that the regulation has taken precedence over the science and the need to protect the public health.

This bill as presented by the chairman reflects the scientific data that shows that not only does having chemically enhanced primary not hurt the environment, but it also shows that the studies that have been done by many, many scientific groups, in fact every major scientific study in the San Diego region has shown that if we go to sec-

ondary, as my colleague from California would suggest, that the secondary mandate would create more environmental damage than not going to sec-

ondary.
This is a big reason why a gentleman from Scripps Institute, a Dr. Revel, came to me and personally asked me to intervene. My colleagues may not think that I have any credentials in the environmental field, but I would point out that Dr. Revel is one of the most noted oceanographers that has ever lived in this 20th century. He has left the Earth, but his spirit passt away. He was saying strongly that the secondary mandate on the city of San Diego was going to be a travesty, a travesty to the people of San Diego but, more important, a damage to the environment of our oceans and our land.

My colleague from San Jose has pointed out that there may be a problem giving waivers. I think we all agree that there are appropriate procedures, but those procedures should follow science.

The city of San Jose has gone to extensive treatment, Mr. Chairman, but when the science said that you could dispose of that in the estuary of southern San Diego, my colleagues in the city of San Jose was given a waiver to be able to do that, and will continue to do it because the science says that it is okay. Our concern with this is the fact that the process should follow the path toward good science.

What we have today now is a process that diverts the attention of those of us in San Diego and the EPA away from real environmental problems and puts it toward a product that is 26 pounds of this for $1.5 million dollars' worth of expenses. It is something that I think that we really have to test those of us here: Do we care about the environment of America or do we care about the regulations of Congress?

When the science and the scientists who have worked strongly on this stand up and say, “Don’t require secondary sewage in San Diego,” we really are put to the test. Are we more wedded to our regulation than we are to our environment?

Now if you do not believe me, though I have fought hard at trying to clean up Mexican sewage and trying to get the sewage to stay in pipes, while the EPA has ignored that, they have concentrated on this process. I would ask my colleague to consider his own colleague, the gentleman from California [Mr. Filner], who has worked with me on this and lives in the community and has talked to the scientists, and Mr. Filner can tell you quite clearly that this is not an issue of the regulations with the environment, this is one of those situations where the well intentioned but misguided mandate of the 1970's has been interpreted to mean we are going to damage the environment of San Diego, and I would strongly urge that the environment takes precedence here.

Mr. Chairman, I would ask my colleague from San Diego, Mr. Filner, to respond to the fact that it is not true that the major marine biologists, Scripps Institute of Oceanography, one of the most noted institutes in the entire country on the ocean impacts, supports our actions on this item? Mr. Filner, Mr. Chairman, will the gentleman yield?

Mr. BILBRAY. I yield to the gentleman from California.

Mr. FILNER. Mr. Chairman, I appreciate both you and the Congressmen from my adjacent district, San Diego. Before I answer the question, I do want to point out that for many years we had adjacent districts in local government, Mr. BILBRAY being a county supervisor and myself being a San Diego city councilman. We have worked together for many, many years on this very issue. We have fought about it, we have argued about how we should handle this, and I think it is very appropriate that we are both now in the Congress to try to finally give San Diego some assurance to try to deal satisfactorily with the environment, and yet do it in a cost-effective manner.

The gentleman from California asked me about good science. The gentleman from San Jose talked about good science. The most respected scientists who deal with oceanography in the world at the Scripps Institute of Oceanography have agreed with our conclusions.

The CHAIRMAN pro tempore. The time of the gentleman from California [Mr. BILBRAY] has expired.

Mr. BILBRAY. I yield to the gentleman from California.

Mr. FILNER. If the gentleman will continue to yield, the scientists from the Scripps Institute have lobbied this Congress for this change. The Federal judge in charge of the case has lobbied us for the change. The local environmental groups have lobbied us for the change. The environmental groups have lobbied us for the change. And I would ask my colleague to continue that thought.

Mr. BILBRAY. I would like to point out, Mr. Chairman, my experience with Mr. Filner was as the director of the public health department for San Diego, and as he knows, this is not something I am not involved with. I happened to be personally involved with the water quality there. I surf, my 9- and 8-year-old children surf. We have water contact; we care about the environment.

Mr. PALLONE. Mr. Chairman, will the gentleman yield?

Mr. BILBRAY. I yield to the gentleman from New Jersey.

Mr. PALLONE. Mr. Chairman, what do not understand though, since the existing bill that was passed last year actually allows for you to have a waiver, assuming certain conditions are met, and EPA I understand has already gone through that application process, why do you find it necessary in this bill to grant an absolute waiver?

Mr. BILBRAY. The CHAIRMAN pro tempore. The time of the gentleman from California [Mr. BILBRAY] has again expired.

Mr. PALLONE. Mr. Chairman, what I understand, you tell me if I am wrong, is that pursuant to this legislation, I will call it special legislation if you will that passed last year, San Diego will then now apply. It may be the only municipality that can.

And EPA is now in the process of looking at that application for a waiver, and if in fact what Mr. Filner and you say is the case that the waiver then is likely to be granted, why do we need to take that one exception that is already in the law for San Diego and now expand it to many others, thousands possibly of other municipalities around the country?

Mr. BILBRAY. The fact is that it is costing $1.5 million. The fact is, it is only a 4- to 5-year waiver, and the fact that under our bill all monitoring, the EPA will monitor it, the Environmental Protection Agency of California will monitor it. We have developed a system that scientists say will be the most cost-effective way of approaching this. All of the monitoring, all of the public health protections are there. As long as the environment continues not to be injured, we will continue to move forward.

And you have to understand, too, one thing you do not understand that Mr. Filner and I do understand, we have had at the time of this process, this bureaucratic process has been going on, we have had our beaches closed and polluted from other sources that the EPA has ignored.

Mr. PALLONE. I understand, and you have gone through that with me and I appreciate that. My only point is do not want to go down the slippery slope of the possibility of getting applications and waivers granted.

Mr. BILBRAY. There is no slippery slope. What it says is those that have proven scientifically there is no reason to believe that we need any regulations is where the damage is going to occur should not have to go through a process of having to go through EPA and the Federal bureaucracy. I think you would agree if we in the 1970's were told by scientists there is no foreseeable damage or foreseeable problem with water quality, this law would never have been passed. In San Diego the scientists have said that, and I think you need to reflect it.

Mr. PALLONE. My point is the exemption for San Diego applies to 3 miles out, certain feet.

Mr. BILBRAY. Four miles, 300 feet.

Mr. PALLONE. Now you have another exemption for certain towns. Mr. BILBRAY. Totally different.
Mr. PALLONE. Though you have another exemption, towns under 10,000, no scientific basis for that. All these things are thrown into the bill.

The CHAIRMAN pro tempore. The time of the gentleman from California [Mr. BILBRAY] has again expired.

(Arrt the request of Mr. MINETA and by unanimous consent, Mr. BILBRAY was allowed to proceed for an additional 2 minutes).

Mr. BILBRAY. The fact is here it is outcome-based. In fact the water quality is not violated as long as scientists at EPA say there is no damage. My concern is that the monitoring is done, if the environment is protected, if EPA and all of the scientists say it is fine, why, then why is the process with a million and a half dollars and 26 pounds of paper so important to you to make sure those reports have been filed?

Mr. PALLONE. The difference is you are going through that process and you may actually achieve it in convincing the EPA pursuant to the existing law that that is the case. But what this bill has done beyond that, it has said that there is an absolute waiver for San Diego, they do not really have to do anything else at this point.

Mr. BILBRAY. Yes, with all the monitoring that would have to be done under existing law, the same review process and public testimony the same way.

Mr. PALLONE. Then it goes on to take another category, 1 mile and 150 is OK, and for a third category if you are under 10,000 it is OK. For another category for Puerto Rico we are going to do the study. You know you may make the case, we will have to see, that your exception makes sense. You may be able to do that to the EPA, but why do we have to go through the entire bill and make all those other exceptions? It makes no sense to carry one San Diego case that is now going through proper channels. This says they get the waiver; they do not need to go through the process in the previous bill, and now we have all these exceptions.

Mr. BILBRAY. You have to read the bill and all the conditions of being able to meet the triggers of the EPA.

Mr. PALLONE. I have the bill in front of me. It has four different categories. The San Diego category, then it goes for the ones who go 1 mile and 150, then the ones that are 10,000 or fewer, and then it goes to Puerto Rico. All of these categories.

Mr. BILBRAY. And you have monitoring that basically says that you have to prove, bring monitoring that you do not, that you are not degrading the environment. That is what we are talking about; we are talking about an outcome basis. Does it hurt the environment? Not the regulations. Is the environment hurt? What?

Mr. PALLONE. I do not see any scientific basis.

The CHAIRMAN pro tempore. The time of the gentleman from California [Mr. BILBRAY] has again expired.

Mr. MINETA. Mr. Chairman, I ask unanimous consent that the gentleman from California [Mr. BILBRAY] be allowed to proceed for 2 additional minutes.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from California?

Mr. BILBRAY. Mr. Chairman, reserving the right to object, I will not do so now, but if we are going to move this along, I think we should all try to stay within the rules of the House and the time allotment.

Mr. MINETA, Mr. Chairman, if the gentleman would yield, I was just asking for unanimous consent for the gentleman from San Diego, Mr. BILBRAY, to be given an additional 2 minutes, and I would like to be able to ask a question of him since he also referred to the city of San Jose, and I happen to be the former mayor of San Jose.

The CHAIRMAN pro tempore. The Chair will inquire once again, is there objection to the request of the gentleman from California?

There was no objection.

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. BILBRAY. I yield to the gentleman from California.

Mr. MINETA. Mr. Chairman, my objection is this: that last year we had before the city of San Diego the opportunity to apply under previously expired provisions to apply for a waiver. I thought we did that in good faith, with the city of San Diego also agreeing to certain conditions. Things like the need for alternative uses for their water and say that this would be a waiver that would only be good for a certain period of time. It is my understanding that the waiver is indefinite, except that there is a requirement for a report to be done every 5 years. And that to me is a reasonable kind of an approach.

Also in terms of any waiver for the city of San Jose, I am not familiar with what the gentleman is referring to, because we are at tertiary treatment in San Jose and our discharge into San Francisco Bay.

Mr. BILBRAY. The fact is that San Jose opens into an open trench into 20 feet of water in an estuary; it does not place it 350 feet deep and 4½ miles out in an area where scientists say not only does it not hurt the environment, it helps it. And so you do have a waiver to be able to do that rather than being required to have to use other outfall systems but it is because you were able to show that.

But the trouble here with this process is that all reasonable scientific data shows that there is no reason to have to spend the 26 pounds of reports, the $1½ million, and when you get into it, EPA will be the trigger to decide if there is a need or not. What EPA told me as a public health director when I say this is a waste of money, the Government did not mean to do this, they said Congress makes us do it. They do not give us the latitude to be able to make a judgment call based on reasonable environmental regulations they have mandated to us. So I am taking the mandate away from them.

Mr. BORSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I wish to express my strong support for this amendment to strike the waivers of secondary treatment requirements.

This is an issue of protecting our Nation's beaches and coastal waters. It is a matter of protecting the tourist economies of many States and of protecting the health of the American public.

Do we want our ocean waters to be a disposal area for sewage that has received only the barest minimum of treatment?

For 20 years, we have done better than that as the secondary treatment requirement has stood as one of the pillars of the Clean Water Act.

This bill started with a waiver for one city—San Diego. Then it moved to two dozen more in California and another possible six in Florida. Then we added Puerto Rico.

Where will this race to lower standards end?

H.R. 961 tells those who complied with the Clean Water Act that they should have waited. Maybe, they could have gotten a waiver.

It tells those who waited that they were smart. They could keep putting their untreated sewage in the ocean.

The beaches of New Jersey had frequent water problems several years ago before New York City finished its secondary treatment plant.

The problems in New Jersey should be a warning that we should stick to the secondary treatment requirements and not put poorly treated sewage in the ocean.

This provision of H.R. 961 sends us back more than 20 years. Since 1972, secondary treatment has been the standard that all communities have been required to meet.

That basic standard of the Clean Water Act must not be changed. We should keep moving forward on the effort to clean up our waters.

Mr. Chairman, I urge my colleagues to hold the line on secondary treatment and vote for this amendment.

Mr. DeFAZIO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have to admit that I have seen some alternatives around the world that do intrigue me. If we are trying to go to this broad of an exemption from secondary treatment, for instance in Hong Kong, I was there and on the ferry early one morning, and I noticed how they deal with it, they do not require secondary; in many cases they do not require primary treatment. They have a system that is called a little trickled to their sewer system. They have thirty boats that go around the harbor with nets in the front and they scoop up everything that floats, and if it does not float, it is not a problem. So I guess
Mr. DEFAZIO. I yield to the gentleman from California.

Mr. FILNER. Mr. Chairman, I think we ought to spend $5 billion to get an infinitesimal increase in that solid removal. We ought to spend that money on the land environment, because we would have to put in extra energy to do that for sludge.

Mr. DEFAZIO. Reclaiming my time. Mr. FILNER. It is not environmentally sound.

Mr. DEFAZIO. Does this exemption go narrowly to that 1 percent for San Diego, or does exemption go beyond that?

Mr. FILNER. I am certainly supporting it as the section in the bill that applies to San Diego.

Ms. HARMAN. Mr. Chairman, I move to strike the requisite number of words.

(Ms. HARMAN asked and was given permission to revise and extend her remarks.)

Ms. HARMAN. Mr. Chairman, I spoke yesterday generally about this bill and my objections to it.

I am rising today to support the Pallone amendment, and also to make some more specific comments about that portion of the bill providing a waiver for full secondary treatment. That portion of the bill was drafted by my good friend and colleague, the gentleman from California [Mr. HOAG], and his district is just south of mine, and we agree on most everything, except for this.

I want to explain why we disagree and also to say that we worked together. His office was extremely helpful to me in providing information in support of his amendment, and I hope he understands that my demur has to do specifically with what I believe are the unintended consequences of his amendment on Santa Monica Bay. Santa Monica Bay is the largest bay in southern California, and most of it is in my congressional district. I wrote to EPA so that I could understand better whether good science was involved in his amendment and how it would affect Santa Monica Bay. The letter that I received the other day from the assistant administrator of EPA says, in part:

This amendment does not appear to be based upon sound science. We are not aware of any scientific documentation which suggests that discharges through outfalls that are one mile and 150 feet deep are always environmentally benign. To the contrary, a 1993 study by the National Research Council recommended that, "Coastal wastewater management strategy should be tailored to the particular receiving environment." Thus, we believe this blanket exemption is neither scientifically nor environmentally justifiable, and could result in harm to the people who depend upon the oceans and coasts for their livelihood and enjoyment.

And the letter goes on to say specifically that with respect to the Santa Monica Bay Restoration project, a project worked on by all sorts of agencies and individuals in California and supported by California's Governor, Peter Wilson, this blanket exemption could derail the key element of the restoration plan.

For those careful and specific reasons, I oppose the Horn language, and I support the Pallone amendment. And let me add just one thing. Mr. Chairman, somewhere here is a chart that was provided to me by EPA, and it shows the consequences of not going to full secondary treatment. The suspended solids that can be discharged are the biggest problem, and the chart has this broken out by area of Los Angeles. In the L.A. County sanitation district, which would be directly affected by this exemption, the suspended solids are the highest portion of this chart, and it is a big problem specifically for Los Angeles.

Let me finally say one more thing. The gentleman from California [Mr. HORN] has sent, I think today, a "Dear Colleague" letter, and he makes a point with which I agree, and I want to apologize to him. He says that in a different "Dear Colleague" letter circulated by some of us, we said that his amendment could send sewage dumped into Santa Monica Bay. That was an error. I apologize for that. The amendment would result in partially treated sewage dumped into Santa Monica Bay.

I urge my colleagues to support the Pallone amendment.

Mr. HORN. Mr. Chairman, I move to strike the requisite number of words.

Mr. SHUSTER. Mr. Chairman, I yield to the gentleman from Pennsylvania.

Mr. HORN. Mr. Chairman, I yield to the gentleman from California.

Ms. HARMAN. Mr. Chairman, I thank my good friend for yielding.

The San Diego situation is a classic example of regulatory overkill. But regardless of how you feel about San Diego, you should vote "no" on this amendment, because it guts all of the provisions that allow flexibility on secondary treatment, for flexibility for small communities across America.

We have worked on all of these provisions with State officials, wastewater and environmental engineers, and we should resoundingly defeat this amendment not only because of San Diego but because of what it does across America.

Mr. HORN. Mr. Chairman, I rise today in opposition to this amendment to strike the provisions of the bill which authorize waivers of secondary treatment requirements for certain coastal communities which discharge into deep waters.

I successfully offered this provision in the committee markup of H.R. 961. My reasons for doing so were based on sound scientific reasons, and they are environmentally responsible.

I was delighted, and I am delighted to take the apology of my distinguished colleague from southern California.

That letter she quotes from the assistant administrator of EPA talks in broad generalities. It does not talk about the specifics of the Los Angeles
area situation, and I want to go into that.

There is no permanent waiver in this provision. It would be good for 10 years. It would be subject to renewal after that period. The driving force behind this amendment is simply good science. This Congress is moving forward to implement cost/benefit analysis and risk assessment across all environmental statutes.

Deep ocean outfalls that meet all water quality standards are an obvious place to apply these principles. Now, to obtain this waiver, publicly owned treatment works must meet a stringent high-hurdles test, and I have not heard one word about that today. Outfalls must be at least 1 mile long, 150 feet deep. The discharge must meet all applicable State and local water quality standards, and I do not think anyone is going to tell us that California has low water quality standards. We have high standards, just as we do in air pollution.

Now, the EPA has had a public hearing in Los Angeles for these very reasons beyond 6 in California and the two Hawaii ones, to open the door. The language is very specific. It applies to one situation: The city and county of Los Angeles, local taxpayer dollars, and city of Los Angeles, local taxpayer dollars, and it serves the public interest, it serves the interests of the local taxpayers, and it serves the interests of the Nation to keep this waiver intact, and all else is really nonsense.

The CHAIRMAN pro tempore. (Mr. HOBSON). The time of the gentleman from California [Mr. HORN] has expired.

Mr. HORN. Mr. Chairman, going to full secondary treatment will not have any positive environmental benefit. Instead, we will be spending, as I have said earlier, hundreds of millions of dollars of the citizens of the county and city of Los Angeles, local taxpayer money, for no good reason. We simply cannot afford to be wasting money on problems that do not exist.

If municipal wastewater treatment facilities are meeting the high-hurdles test, including in H.R. 961, it serves the public interest, it serves the interests of the local taxpayers, and it serves the interests of the Nation to keep this waiver intact, and all else is really nonsense.

The CHAIRMAN pro tempore. The time of the gentleman from California [Mr. HORN] has again expired.

Mr. HORN. Mr. Chairman, will the gentleman yield?

Mr. HORN. I yield to the gentleman from New Jersey.

Mr. PALLONE. Mr. Chairman, my position again, I heard the San Diego argument. I do not agree with it, but I am hearing it. You are opening the door, and you have opened it to the six California and two Hawaii ones, to eliminating secondary treatment requirements for a whole slew of other municipalities. That is a problem.

Mr. HORN. Mr. Chairman, reclaiming my time, may I say to the gentleman from New Jersey, we are not opening the door. The language is very specific. The hurdles are quite specific as to the outfalls 1 mile long, 150 feet deep, that must meet all applicable State and local water quality standards and must have an ongoing ocean monitoring plan in place. That is exactly what we have. These charts show that we are way below the level of concern. The question if very simple, folks. For the sake of the ego of EPA, do we have the taxpayers of Los Angeles spend $400 million when it will not improve the situation one iota, because
they already meet it? So the full secondary bit has been met in the pre-secondary, and that is why we should not be spending $400 million more.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. HORN. I yield to the gentleman from California.

Mr. HUNTER. Mr. Chairman, I thank the gentleman for yielding. Let me say I support him in his efforts to inject some common sense into this arbitrary application of law that defies science. The best scientists in the world have supported our situation in San Diego where they say nature takes care of this; you do not have to spend $2 billion, EPA, we can spend it somewhere else where we desperately need it. Science also supports the gentleman from Long Beach.

The point is, the gentleman says this opens the door. Let me say to my friend from New Jersey, the door should always be open to reason, common sense, and science. That is precisely what we are injecting in this argument today. With all the programs, good programs, that must take reductions because of the deficit problem, the idea that you do not use common sense to reduce spending where it does not have to be done makes no sense. So I support the gentleman.

Mr. FILNER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, not to beat a dead horse or a dead sewage system, as the case may be, I do rise in strong opposition to the amendment offered by my friend the gentleman from New Jersey [Mr. PALLONE].

This amendment raises the possibility that San Diego will be forced to waste, yes, waste, billions of dollars to change a sewage system that this Congress, the Environmental Protection Agency, a Federal District Court judge, the San Diego chapter of the Sierra Club, the well-renowned scientists from the Scripps Institute of Oceanography, all have agreed does no harm and in fact may benefit the marine environment.

Mr. Chairman, the one-size-fits-all requirement of the Clean Water Act just does not make sense for San Diego. It does not make scientific sense, it does not make economic sense, nor does it make environmental sense. It is simply a bureaucratic requirement that is unnecessary, costly, and provides no beneficial impact to the marine environment.

This is not simply my personal opinion. The option, as we stated over and over again, is stated by scientists from the Scripps Institute of Oceanography and from the National Academy of Sciences. It is supported by reams of scientific data collected over the years.

These studies have shown there is no degradation of water quality or the ecology of the ocean due to the discharge of the plant's chemically enhanced treated waste water.

Let me point out, this is not merely a chlorine treated primary situation. This is an alternative to secondary treatment that includes a much higher level of technology that my friend, if I can yield to my friend from California [Mr. BILBRAY], might explain.

Mr. BILBRAY. Mr. Chairman, if the gentleman will yield, I think the problem is that the gentleman is depicting the technical issues here. The fact that what was interpreted as being chlorination, San Diego is not using the chlorination.

Chemically enhanced primary treatment was actually brought to San Diego by members of the Sierra Club as a much more cost effective and environmentally safe way of getting to secondary treatment. It is where you use chemicals to remove the solids to fulfill the standard.

What it does is say, back in the seventies we thought there was only one way to be able to clean up the water. Now scientists have come up with new technologies. If we look at a 1970 car and a 1990 car, we will agree there is a difference.

The other issue, the chemical, what is called chemical enhanced primary, the fact is primary really is talking about a secondary treatment that does not use injected air and bubbling sewage around, biological activity. In a salt water environment scientists say there is no problem with this, it does the job. The only difference is the BOD, the biochemical oxygen demand, which in a deep salt water environment does not create any problem according to the scientists.

I would like to point out, too, as my colleague has, we are talking about this can only be done if the facility's discharges are consistent with the ocean plan for the State of California, one of the most strict water quality programs in the entire Nation, if not the world, and according how you do it we do not mind, as long as the finished product does not hurt the environment and gets the job done.

I appreciate my colleagues who are going through a transition here. We are getting away from command and control. Washington knows the answer to everything. What we are trying to get down to is saying, local people, if you can find a better answer to get the job done that we want done, you not only have a right to do that, you have a responsibility, and we will not stand in the way of you doing that.

I would like to point out that the monitoring continues. If there is a pollution problem, if the EPA sees there is a hassle, if the monitoring problem should surface, environmental problem, this waiver immediately ceases and we go back to the same process. That should assure everyone who cares about the environment.

Mr. FILNER. Mr. Chairman, reclaiming my time, I do want to thank the chair of the Committee on Transportation and Infrastructure for understanding the issues for San Diego, for helping us last year get our waiver, and for guaranteeing a success this year.

Mr. PACKARD. Mr. Chairman, will the gentleman yield?

Mr. FILNER. I yield to the gentleman from California.

Mr. PACKARD. Mr. Chairman, I would like my colleagues in the Congress to recognize that this has been an issue that has been before the Congress for as long as I have served in Congress, for 12 years and more. We have been working on this issue of trying to resolve the problems that San Diego has had. If we are to follow the general policy that is now taking place in the Congress, where we evaluate every requirement and every mandate and every regulation on the basis of cost-benefit analysis, there is absolutely no question that we would never impose a multibillion-dollar process on San Diego.

The CHAIRMAN pro tempore. The time of the gentleman from California [Mr. FILNER] has expired.

(By unanimous consent, Mr. FILNER was allowed to proceed for 1 additional minute.)

Mr. FILNER. Mr. Chairman, I yield to the gentleman from California.

Mr. PACKARD. Mr. Chairman, there is no way that this project, as it would be required to go to secondary treatment, could possibly pass a cost-benefit analysis, and thus we ought to really allow the flexibility that the gentleman from Pennsylvania [Mr. SHUSTER] has put in the bill that would allow the City of San Diego to meet their requirements in an environmentally sound way.

I strongly urge that the Congress approve the bill as it is written and reject this amendment. There is a bipartisan issue for this. The entire delegation from San Diego, of whom I am one, has recommended we approve this amendment. It is certainly important to us that we do not impose a $12 billion cost on the people of San Diego.

Mr. Chairman, I rise in opposition to Mr. PALLONE's amendment to the clean water reauthorization bill. This amendment plays right into the environmentalists' chicken little cries that our environmental protection system is falling. On the contrary, chairman Shuster's amendments to the clean water bill provide flexibility that the gentleman from Pennsylvania [Mr. SHUSTER] has put in the bill that would allow the City of San Diego to meet their requirements in an environmentally sound way.

San Diego's location on southern California's beautiful coastline allows the city to take advantage of deep ocean outfall capabilities. Scientific studies conclude that San Diego's sewage treatment efforts are both effective and environmentally sound. In fact, the surrounding ecosystem flourishes partly as a result of the outfall.

Yet, the EPA continues to shove their Federal mandates from Washington down the throats of San Diego taxpayers. They continue to use common sense to reduce spending where it does not have to be done makes no sense. So it does not make environmental sense, it does not make economic sense, nor does it make scientific sense.
to require San Diego to spend up to $12 billion on an unnecessary and potentially environmentally damaging secondary sewage treatment plant.

Year after year, San Diego officials battle Federal bureaucrats who require the city to submit a costly, time consuming waiver application. The last one cost $1 million and was more than 100 pages long. The American people are tired of this kind of bureaucratic bullying.

Far from the Chicken Little cries of the environmentalists, the American people cry out for a little commonsense. Chairman SHUSTER's bill and the San Diego waiver provision bring a level of rationality to the environmental protection process. Since I began my service in Congress, I have worked as a former member of Chairman SHUSTER's committee to do just that. Now as part of a Republican majority, I am pleased to see my efforts come to fruition.

Republicans love the environment as much as anyone. My district in southern California contains some of the most beautiful natural resources in the country. I would never vote for a bill which would damage those resources in any way. I just think the people who live on the coast, or in the forests, or canyons or grasslands have a better sense of how to protect their resources than some bureaucrat sitting in an office in Washington. The situation in San Diego demonstrates this most clearly. For this reason, I oppose Mr. PALLONE's amendment.

Mrs. FOWLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, there is an issue on which I would like to engage in a colloquy and get the support of the chairman of the committee. I understand that section 339(h)/(f) identifies the scope for which a state may use clean water grants.

Mr. Chairman, in my state of Florida, the excessive growth of nonindigenous, noxious aquatic weeds, like hydrilla, is an extremely serious impairment of our waters. Funds available for control of these weeds are presently very limited. This provision authorizes States like Florida to utilize a portion of their nonpoint source funds, should they choose to do so, for the control of excessive growth of these nonindigenous aquatic weeds. Although this is an important provision, Mr. Chairman, it is important to understand that the utilization of funds for aquatic weed control should not deplete the funds available for other nonpoint source programs. Is that the understanding of the chairman of the committee?

Mr. SHUSTER. If the gentlewoman will yield, Mr. Chairman, that is correct.

Mrs. FOWLER. I thank the chairman of the committee for his support and clarification on this section.

Mr. WAXMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of this amendment. H.R. 961 is a dangerous piece of legislation for my district, which includes the beautiful Santa Monica Bay. For years the people of Los Angeles have worked to clean the bay and make it safe for swimmers, divers, and the thousands of people who eat local seafood.

The city of Los Angeles, however, deserves very little credit for this. City bureaucrats have dragged their feet and done everything they could to avoid tougher controls. But our community was so committed that it overruled the bureaucrats and twice voted by overwhelming margins to stop the Los Angeles sewage system from dumping poorly treated sewage into the bay. As a result, we have spent over $2 billion to bring full secondary treatment to the Hyperion treatment plant. Let me repeat that, because it is important to understand our situation. We have already spent $2 billion to stop dangerous pollution. To complete the project, we need to spend $85 million more.

Well, under this bill, we will never spend that $85 million, and we will never be able to clean up the bay. H.R. 961 would allow EPA to make the decision and relieve the sewage system from meeting its obligation under the Clean Water Act to treat sewage.

This is a bizarre situation. Congress is going to overturn a local decision by Los Angeles voters, and in the process throw $2 billion down the drain and condemn the Santa Monica Bay to a constant flow of sewage. Let us avoid this lunacy and vote for the Pallone amendment.

Mr. Chairman, let me just take issue with the theme that was offered by my friend and colleague from the Los Angeles area and apply it to our situation in San Diego.

In San Diego, we have the Scripps Institute, as has been said a number of times by the gentlemen from California, Mr. FILNER and Mr. BILBRAY and Mr. PACKARD, the best scientists in the world with respect to oceanography. Those scientists over many years have reaffirmed and reaffirmed that you do not need to do this $2 billion treatment program for the cleaning of San Diego sewage.

We have literally thousands of projects throughout the country where you do have pollution problems, where you are begging for dollars.

As a result, we have spent over $2 billion on defense nuclear weapons complex, we have a $6 billion budget that has been submitted to us by the Clinton administration to clean up the nuclear waste that has been repossited through the years at our defense weapons installations. You have a lot of places where we can use this money. Here we have our own scientists, the best scientists in the world, who are not rebutted scientifically by anybody, saying, you do not have to spend $2 billion doing this.

This has been in these meetings with EPA over the years, as Mr. BILBRAY has. The basic theme that has come from them and again in the meetings has been, we do not care what the scientists say. You have got to do it because it is the law.

Here we are advocating our colleagues and the taxpayers to do what is right, to do what is consistent with science, to do what is consistent with public safety and to save $2 billion. If we cannot understand that this blind adherence to this rigid philosophy that has made EPA frankly an enemy of many communities in this country, if we cannot understand that this philosophy needs to be changed, then we are going to be spending billions in the future that we do not need to spend.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. HUNTER. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, I think the gentleman for yielding to me.
May 11, 1995

CONGRESSIONAL RECORD – HOUSE
H 4811

Mr. HUNTER. Mr. Chairman, I yield to the gentleman from New Jersey [Ms. HARLAN]...
treatment for discharge in swiftly moving marine waters such as those that exist off Pt. Loma. Additionally, scientists of the National Academy of Science, after three years of study, have published conclusions that support San Diego's efforts to abandon the Clean Water Act. The Academy's April 1993 study "Waste Management for Coastal Urban Areas" includes many findings applicable to San Diego's situation. The Academy concluded that the secondary treatment requirement can lead to overcontrol and overprotection along open ocean coasts. Further, the Academy stressed that the Clean Water Act does not allow regulators to adequately address regional variations in environmental systems. In the case of a deep ocean discharge, the situation is even better than the waiver. It determined that biochemical oxygen demand, pathogens, nitrogen and other nutrients were of little concern. In summary, the Academy scientists concluded that chemically enhanced primary treatment is an effective technology for removing suspended solids and associated contaminants.

The State of California concurs with the Scripps scientists as well as the National Academy of Science. Our review of your system and the extensive Ocean Monitoring Program reports further support last year's position that San Diego will continue to meet all State Ocean Plan Standards for your discharge. Based on this scientific evidence, the State will respond favorably to the City's request for legislation to grant an exemption from secondary treatment. Sincerely,

**James M. Stock**
CAJORWQUALITY CONTROL BOARD, SAN DIEGO REGION,
San Diego, CA, March 27, 1995

David Schlesinger, Director, Metropolitan Wastewater Department, San Diego.

*Dear Mr. Schlesinger:* Recently there have been some questions raised about regulation of the City of San Diego's discharge through the Point Loma Ocean Outfall. Because of the length of the extended outfall, the ternus is now beyond the 3 mile offshore boundary for State waters. Nevertheless, a NPDES permit will still be required for the City's ocean discharge. However, U.S. EPA would have the lead role in the issuance of this permit.

I recommend that the Regional Board will participate in formulating the regulations that will apply to the City's ocean discharge. This participation will most likely be either from your comments or from the NPDES permit to be issued by U.S. EPA or the issuing of a NPDES permit for the discharge by the Regional Board. In either event, it would be my recommendation that the NPDES permit for the City's ocean discharge contain requirements consistent with the State's Ocean Plan for the effluent, receiving waters and monitoring with regard to the State's Ocean Plan, I would recommend that the receiving water limits therein apply at the boundary of the zone of initial dilution (ZID) even though the ZID is beyond the 3 mile limit.

If you have any questions, or would like to discuss this matter further, please call me at the number on the letterhead.

Very truly yours,

Arthur L. Coe, Executive Officer.

*From the Union-Tribune, Mar. 23, 1995*

**END THE NIGHTMARE—BOXER SHOULD SUPPORT BILBRAY’S SEWAGE BILL**

San Diego's multibillion-dollar sewage nightmare is on the verge of being solved. A solution has been devised in the House of Representatives in the form of a bill that would permanently exempt San Diego's sewage system from the secondary treatment mandates contained in the Clean Water Act. If it is enacted, as is expected soon, it will disappear. The bill is sponsored by Rep. Brian Bilbray, R-Imperial Beach, at which time will the House easily. It is supported by our country's entire congressional delegation and the leadership, including Speaker Newt Gingrich, R-Ga.

That means the crucial hurdle for the Bilbray bill will be the Senate.

On a measure affecting only one state, tradition in the Senate holds that both senators from that state must approve of the bill before it can reach the floor for a vote. So far, Sen. Feinstein has been avoiding the issue by avoiding the vote. What could be an extremely costly and totally unnecessary sewage upgrade rest with California Democrats Sens. Barbara Boxer and Dianne Feinstein.

Boxer has told her constituents that she will vote for the Bilbray bill. But instead of honoring the spirit of the Clean Water Act, she will vote against it. In doing so, she will be ignoring the scientific evidence. The Sierra Club's other objection to the Bilbray bill has been that the city has not consulted the Sierra Club. Because of the deep ocean discharge, the city officials have pointed to the public hearings that the scientific community overwhelmingly supports that contention.

The exemption now proposed by Bilbray would simply codify the waiver that Boxer sponsored for San Diego last year. Local environmental groups such as the Sierra Club have opposed the waiver because they have said it wouldn't mandate the extensive ocean monitoring that the waiver requires. Upon hearing that complaint, Bilbray toughened the language on environmental monitoring in his bill.

The Sierra Club's other objection to the Bilbray bill has been that it would undermine provisions for producing reclaimed water that are contained in the waiver legislation. The exemption actually divorces the issue of water reclamation from sewage treatment, which is, in its proper context, an important issue.

If scientists say San Diego doesn't need to treat its sewage to secondary standards, would have to be renewed every five years.

Boxer picked hard for the waiver, explaining to her colleagues that secondary treatment is unnecessary for San Diego's sewage system because of our deep ocean outfall. With San Diego city officials at here side she pointed out at public hearings that the scientific community overwhelmingly supports that contention.

The exemption now proposed by Bilbray would simply codify the waiver that Boxer sponsored for San Diego last year. Local environmental groups such as the Sierra Club have opposed the waiver because they have said it wouldn't mandate the extensive ocean monitoring that the waiver requires. Upon hearing that complaint, Bilbray toughened the language on environmental monitoring in his bill.

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San Diego filed its waiver application in September of 1979. The application asked that San Diego be allowed to meet State Ocean Plan standards which are based on advanced primary treatment and secondary treatment as an alternative to federal standards for secondary treatment.

Concurrent to filing an application for a waiver, the City continued planning efforts. The Metro II facilities plan which included engineering studies for both advanced primary treatment and secondary treatment recommended a new system that would consist of a 45 mgd secondary sewage treatment plant at Point Loma and a 140 mgd secondary sewage treatment plant in the Tijuana River Valley. A major new interceptor system would convey sewage south to the border area and a new land outfall would be constructed along the Tijuana River connecting the new treatment plant with a new ocean outfall.

STATE WATER RESOURCES CONTROL BOARD'S REACTION TO THE WAIVER

After San Diego submitted its Section 301(h) waiver application to EPA, the State Water Resources Control Board assigned a very low priority to the award of federal grant money for construction of secondary treatment facilities. In 1980, the State Board resolved through Resolution No. 80-37 not to award Clean Water Grants for any ocean discharge project in excess of that necessary to meet the Ocean Plan until the Board determined that sufficient grant funds were available to justify funding of such projects.

After the resolution was adopted, numerous coastal communities throughout the state, including San Diego, modified their wastewater treatment planning to eliminate or postpone secondary treatment. Plans already completed or partially completed were shelved as the dischargers awaited the outcome of the Section 301(h) applications. Resolution No. 80-37 is still in effect and has not been amended.

EPA'S TENTATIVE APPROVAL OF THE WAIVER

On September 23, 1981, EPA tentatively approved San Diego's waiver application, conditioned upon the issuance of a revised federal NPDES permit for the secondary discharge. The 301(h) permit was to be issued following a joint public hearing before EPA staff and the Regional Water Quality Control Board. The public hearing was held in November 1982, however, the issuance of the permit was held in abeyance to allow the EPA and Regional Board to consider the public testimony.

MEXICO/UNITED STATES BORDER ISSUE

In April 1982, San Diego continued its facilities planning efforts by initiating a study directed toward determining a long-term solution to the Tijuana River sewage discharge problem that had resulted in millions of gallons of raw sewage entering the United States from Mexico. The City Council considered an application for the construction of a $730 million joint international wastewater treatment and disposal system with capacity for both Tijuana and a portion of San Diego.

REVISED WAIVER APPLICATION

During the three years in which the EPA was reviewing the original waiver application, the City updated population projections and sewage flows in the waiver application. The projections showed that the proposed sewage flows in the waiver application were substantially higher than those used in determining the projected sewage flows in the waiver application. When, in 1983, the EPA opened up the waiver process for a second time, the
City used the opportunity to revise and re-submit its applications, which included projections for sewage discharge through the year 1993, and to account for treatment of Tijuana sewage. The 1983 application was pending when the 1989 conclusions that secondary treatment of the Point Loma sewage discharge was not necessary to protect public health and the environment, and the City provoked an interest in revising the State Ocean Plan.

While the City was filing its revised waiver application with EPA, the State Water Resources Control Board was making changes in the State Ocean Plan which would eventually have a direct impact upon the application.

In 1983, the board adopted two significant revisions to the plan: 1. By city contact bacteriological standards, the same ones formerly applied only to public bathing beaches, were adopted for all kelp beds off the California coast. This action was taken to protect those persons who SCUBA dive in the beds, and was to take effect on July 1, 1988. The law also allowed the Regional Board to examine kelp beds near sewer outlets on a case-by-case basis and impose those standards ("dedesignation") where warranted.

2. Cities were given the opportunity to apply for a waiver of the suspended solids standards under the Ocean Plan and to request to remove 60 percent rather than 75 percent of that discharge.

Prior to the 1983 revision of the Ocean Plan, neither the City nor any public health or water quality regulatory agency had received complaints of illness among SCUBA divers near the Point Loma kelp beds. In 1985, the City asked the State to exclude or "dedesignate" the Point Loma kelp beds from the bacteriological standards. By excluding the Point Loma kelp beds from the new standards, the Point Loma discharge would not be subject to the bacteriological standards, as addressed in the City's 1979 and 1983 waiver applications.

The Regional Water Quality Control Board conducted public hearings on the City's request for dedesignation of the kelp beds in September and November of 1985. The Regional Board postponed a decision on the matters, however, until the City completed further studies.

DEDENIGNATION AND WAIVER REQUESTS

A. Dedesignation.—After the City filed its original dedesignation request in September 1985, the Regional Water Quality Control Board, it conducted extensive field studies of the Point Loma kelp beds and of the health of those who dive in the kelp beds. The study showed that the proposed bacteriological standards were being met in the inner portions but were frequently exceeded along the outer edges of the beds.

The accompanying health effects study showed, however, that few cases of gastrointestinal illness were reported among divers after using the Point Loma beds, and that the number of cases was well below the level accepted by the EPA. (The study indicated eight reported cases of illness following 1,000 dives, and a new EPA bacteriological standards permit up to 19 cases per 1,000.)

In September of 1986, the Executive Officer of the Regional Water Quality Control Board indicated that a panel of experts meeting that he would recommend against San Diego's dedesignation request because no alternate ocean standards had been developed to protect the ocean ecosystems of kelp beds. He also said that he would recommend against the City's proposed reduction in suspended solids removal because San Diego could not demonstrate an economic necessity for it and was already removing 75 percent of sewage solids at Point Loma with existing rate revenues.

Following discussions at a Council meeting on December 9, 1986, (discussed further in following paragraphs, the City of San Diego tentatively denied its request for revision to the water quality standards on December 16, 1986.

B. Waiver.—On September 30, 1986, EPA announced its decision to reverse its tentative approval of San Diego's 1979 waiver application and to tentatively deny both the City's 1979 and 1983 applications. EPA cited two reasons for the actions: First, it cited the City's inability to comply with the new State Ocean Plan bacteriological standards scheduled to take effect in 1986. Second, EPA chose to enforce those standards, like those formerly applied only to public bathing beaches, to all kelp beds along the California shelf. The City noted that compliance with the standards is necessary to protect the health of recreational users of the kelp beds, and concluded that the Point Loma seawage discharge "has degraded the recreational beneficial use in the kelp bed vicinity." Second, the EPA concluded that the Point Loma discharge "interferes with the protection and propagation of a balanced indigenous population" of bottom dwelling ocean organisms in the vicinity of the Point Loma outfall. In support of this conclusion, the EPA noted species of them is found in greater abundance near the outfall discharge than away from the outfall, and a species of starfish, a brittle star, is less common near the outfall than away from the outfall. The brittle star found in reduced numbers near the outfall is one of the most prominent and significant species on the Southern California shelf.

The City had until March 30, 1987 to submit a revised waiver application to EPA if it intended to continue the waiver. On November 3, the San Diego City Council authorized the City Manager to send EPA a letter of intent to file a revised application. That letter had to be submitted to EPA by November 15, 1986, or the EPA tentative denial would have become final, and a revised waiver application would not be allowed. In authorizing the filing of the letter, several members of the Council cautioned that their action did not indicate support for the filing of a revised waiver application, and that such a decision would be made following a public hearing on the waiver scheduled on December 9.

SAN DIEGO'S DECISION

San Diego's City Council denied two public hearings on December 9, 1986, and one on February 17, 1987, to the issue of the 300(h) waiver application versus secondary treatment. Public response at both meetings favored abandoning waiver efforts and pursuing the federally mandated secondary treatment requirements. Additionally, there was much support for any further possibility for the potential for water reclamation and reuse if the City were to modify its sewage treatment system.

Public testimony combined with consistent negative response by the regulatory agencies placed the City of San Diego in a position requiring immediate action. While all feasible efforts would neither require long range planning and provisions for water reclamation. On February 17, 1987, the decision was made to trade the waiver for closer compliance with federal sewage treatment standards. The City immediately proceeded at full speed to implement secondary treatment and water reclamation, immediate actions by the City included establishing an advisory committee, the Metropolitan San Diego Task Force (MSTF), to lend expertise in and guidance to the City on the many issues surrounding the sewage modifications; and creation of the Clean Water Program to oversee the upgrade and expansion of the sewerage system.

CONSENT DEGREE DISCUSSIONS WITH EPA

Although the City was swiftly and judiciously pursuing facilities planning efforts, it was clear that the July 1, 1988 compliance deadline would not be met. On January 8, 1988, the City embarked on discussions with the Department of Justice, EPA, SWRCB and RWQCB to establish a realistic time schedule for the City to meet the federal discharge standards. Despite the City's commitment to comply, the federal government sued the City on July 27, 1988. The State of California joined as a co-plaintiff.

From 1987 to 1989 the City carried out intensive facilities planning with a team of engineers, planners, and environmental specialists working with the community. After consolidating twenty-two alternatives into seven, the City adopted a plan that included the upgrade of the Point Loma treatment plant, the construction of a secondary treatment plant in the South Bay, and seven new water reclamation plants located throughout the service area. This plan, called the alternative, was negotiated as part of an agreement between the City and the State and Federal governments. This agreement, called the San Diego Decree, was signed by the parties in January 1990 and was lodged in federal court. The cost to implement the facilities in the Consent Decree was estimated to be $2.5 billion in 1992 dollars.

FEDERAL COURT FINDINGS, JUNE 1991

When presented with the proposed plan, Judge William Brewer ordered the City to finalize the Decree on or before August 1991. On June 18, 1991, that the proposed Consent Decree should be declared unlawful. Judge Brewer ordered that the City conduct pilot tests at the Point Loma facility to determine whether or not chemically-enhanced primary treatment could meet the secondary treatment requirements set forth in the Decree, and suggested that the City pursue its best efforts to amend the Clean Water Act. He also suggested that the National Academy of Sciences conduct a study entitled "Management for Coastal Urban Areas," which was due to be completed soon, be used as further guidance on the level of treatment necessary to protect the environment.

CONSUMERS' ALTERNATIVE

In May 1992 the City Council directed a re-evaluation of Alternative IVa based on retaining Point Loma as an advanced primary treatment plant operating at an ultimate capacity of 300 mgd. With this change, 90 mgd of additional capacity could be provided at the Point Loma plant that would not be available if a conversion to secondary treatment had occurred as envisioned by Alternative IVa. The new plan, dubbed the Consumers' Alternative, has an estimated capital cost of $1.2 billion in 1992 dollars. At a July 10, 1992 hearing in Federal Court, Judge Brewer ruled on June 18, 1991 that the proposed Consent Decree should be declared unlawful, pending further hearings on whether or not the City should be enjoined from proceeding with the Consent Decree. He further ruled that the City conduct pilot tests at the Point Loma facility to determine whether or not chemically-enhanced primary treatment could meet the secondary treatment requirements set forth in the Decree. This requirement was not met, and the consent decree was found to be in violation of the Clean Water Act. Judge Brewer held that the City's best efforts to amend the Clean Water Act would not be sufficient. He also suggested that the National Academy of Sciences conduct a study entitled "Management for Coastal Urban Areas," which was due to be completed soon.
PILOT STUDY RESULTS

The City completed the 18-month pilot testing in August 1993. Its purpose was to determine whether or not chemically enhanced primary treatment could be used to bring the Point Loma Plant into compliance with the 30 mg/l effluent requirement for total suspended solids and BOD currently embodied in the Clean Water Act. The results are clear for both constituents: the 30 mg/l law to achieve secondary treatment cannot be met. As a result, the City has redoubled its efforts to amend the Clean Water Act to provide modified standards where it is demonstrated that there will be no adverse impact to the environment.

NATIONAL ACADEMY OF SCIENCE REPORT

After three years of study the Academy released "Wastewater Management for Coastal Urban Areas" in April 1993. No specific recommendations were made regarding San Diego's wastewater treatment system, but a number of conclusions reported by the Academy support San Diego's efforts to amend the Clean Water Act to provide modified standards for coastal urban areas. The Academy concluded that:

1. Wastewater over treatment is problematical for both ocean discharge and reclamation. It requires that there be fewer suspended solids and BOD currently associated with solids, low treatment for removal of these constituents is unnecessary.
2. Chemically enhanced primary treatment is a straightforward, unconditional legislation that will provide the necessary, long-term solution to protect the environment. The "CWA" for more than two decades. Over the past four years our Congressional representatives have worked with the appropriate Congressional committees to pass legislation that would provide an opportunity to establish, once and for all, that the current level of sewage treatment at the Point Loma Treatment Plant fully protects the marine environment, and that the secondary level of treatment prescribed by the CWA does not mean that treatment for the protection of marine life can be "outsourced" to the CWA.

OCEAN POLLUTION REDUCTION ACT

After the bill received the unanimous support of the House and Senate, President Clinton signed the Ocean Pollution Reduction Act on October 31, 1994. This Act allows the City to proceed with the Point Loma Plant treatment and industrial pretreatment secondary treatment within six months and requires the EPA to complete its review of the application within one year of its receipt. It requires that San Diego commit to 45 MGD of water reclamation capacity by May 11, 1995 and to deliver to its Subcommittees for consideration in connection with your hearing on the procedures to be used for the Hearings on the procedures to be used for the act's language, Expressions of Concern, and opposition to the act's language by San Diego's Mayor, the National Academy of Science Committee and the EPA Administrator.

The May 1 letter authored by Congressman McIntosh argues that "the corresponding basic level of treatment fully protects the offshore environment. The May 1 letter also states that the congressional process to amend the Clean Water Act to provide modified standards for coastal urban areas is important to ensure that the necessary, long-term solution to protect the environment; this, however, is "an agency discharge into a tidal estuary in South San Francisco Bay via an open channel (not a submerged outfall pipe) into waters approximately 20 feet deep—a far more efficient, effective treatment plants in the country discharge into inland lakes, rivers and streams where there is limited capacity to assimilate suspended solids and biochemical oxygen demand ("BOD"). The May 1 letter notes that the city of San Jose, California, requires an even higher level of treatment than secondary to protect the environment; this, however, is "an agency discharge into a tidal estuary in South San Francisco Bay via an open channel (not a submerged outfall pipe) into waters approximately 20 feet deep—a far more efficient, effective treatment plants in the country discharge into inland lakes, rivers and streams where there is limited capacity to assimilate suspended solids and biochemical oxygen demand ("BOD"). The May 1 letter notes that the city of San Jose, California, requires an even higher level of treatment than secondary to protect the environment; this, however, is..."
pre-treatment program is exactly what makes San Diego's system unique compared to the rest of the country. Instead of spending billion of dollars on ever higher levels of treatment, San Diego works with its industries to reduce pollution before it ever gets into the system. As a result, San Diego has a higher quality of wastewater coming into its Point Loma plant than is required for the effluent discharged after treatment.

Part of this confusion in the May 1 letter may be attributable to a misunderstanding of what secondary treatment means. San Diego's application for modified standards of secondary treatment is exactly that, and no more: a redefinition of "secondary" under certain circumstances. It is neither a waiver of, or an exemption from the protections of the CWA, and it is certainly not a "license to pollute." San Diego's permit under the Ocean Pollution Reduction Act—and any modified definition applied under H.R. 794—seeks modification of only two of the secondary treatment requirements: total suspended solids and BOD. All of the 200-plus other constituents that are typically measured and monitored at treatment plants across the nation will still have to conform to the secondary treatment requirements of the CWA. Because of the comprehensive and effective industrial pretreatment program currently in place, in the view of those standards in 1966 and would continue to meet those standards under the new law. "Secondary treatment," as currently defined in the CWA, would add nothing significantly beneficial to the process.

**REASONS FOR REJECTION OF THE 1983 WAIVER APPLICATION**

The May 1 letter is incorrect insofar as it implies that the State of California denied San Diego's waiver application in 1966. The state's Regional Water Quality Control Board never considered the March 1966 letter. Instead, the State responded to the EPA with a tentative finding that "the discharge will comply with applicable state laws, including applicable water quality standards, and will not result in additional treatment, pollution control, or other requirements on any other point or non-point source"--that the state's arm of the National Academy of Science, sol-

**SAN DIEGO'S WITHDRAWAL OF THE WAIVER APPLICATION**

The circumstances under which San Diego withdrew its waiver application in 1967, as referenced in the May 1 letter, must be cor-
rected for the record. In federal court, the issue was the seaweed. San Diego's letter was the work of the EPA, not the State. Moreover, the Tentative Decision Document issued in 1966 by the EPA clearly states that EPA's tentative decision, made in 1966 and confirmed in 1983, was based on the California State Ocean Plan that applied the same water quality standards to the offshore kelp beds as had previously been applied to the bathing beaches. This occurred after the letter, because the length and depth of its outfall precludes the need for doing so. The wastefield is completely isolated from both the kelp beds and the bathing beaches, fully protecting the health and safety of our cit-
izens.

Moreover, H.R. 794 merely allows the regulators responsible for enforcing the Clean Water Act, the EPA and the RWQCB, to deem certain discharge to be the equivalent of secondary treatment, chemical or primary-

**SUPPORT OF SCIENTISTS FOR CURRENT LEVEL OF TREATMENT**

The assertion in the May 1 letter, that Scripps Institution of Oceanography has taken no position on H.R. 794, is true. How-

er, every credible scientist who has taken a position on whether or not secondary treatment is needed and would continue to protect the marine environment, secondary treatment is, according to the National Research Council, "an effective technology for reducing pollution and receiving waters, must have an indus-
trially supports the appropriateness of less stringent standards on policy issues such as this. Even so, Scripps Institution of Oceanography has never taken a position on whether or not secondary treatment is needed and would continue to protect the marine environment, secondary treatment is, according to the National Research Council, "an effective technology for reducing pollution and receiving waters, must have an indus-

Thank you for this opportunity to present the facts underlying this important legislation.

Sincerely,

SUSAN GOLDING, Mayor, City of San Diego.

The CHAIRMAN. The time of the gentleman from California [Mr. HUNTER] has again expired.

[On request of Mr. WAXMAN, and by unanimous consent, Mr. HUNTER was allowed to proceed for 1 additional minute.]

Mr. WAXMAN. Mr. Chairman, it seems to me the gentleman makes a very good case for San Diego and he ought to get his waiver under existing law. But the point I want to make to the gentleman, it is not in any way denigrating your case, but in our situation, the local people want the secondary treatment and the bureaucrats that are dragging their feet are local bureaucrats. So let us understand, bureaucrats are not only at the Federal level that frustrates actions that the people want.

Mr. HUNTER. Reclaiming my time, Mr. Chairman, the tie goes to the runner. We would rather have the local bureaucrats making decisions than those in Washington, DC.

Mr. BILBRAY. Mr. Chairman, if the gentleman will continue to yield, as somebody who was operating a health department, the elected officials locally that have to surf in those waters, the ones who are elected and go face to face with the citizens every day, they are the ones who know what really is happening in the ocean and they are the ones who are the most concerned and the most appropriate to be able to enforce this.

Mr. WAXMAN. Mr. Chairman, if the gentleman will continue to yield, they are the ones who have dragged their feet contrary to the will of the people who have had to vote twice to say they wanted this.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from New Jersey [Mr. PALLONE].

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.
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stormwater management programs need to

under this subsection shall include the fol-
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``(F) IDENTIFICATION OF FEDERAL FINANCIAL ASSISTANCE PROGRAMS .ÑAn identification of

``(D) S CHEDULE.ÐA schedule containing interim goals and milestones for making rea-

``(C) PROGRAM FOR REDUCING POLLUTANT LOADINGS .ÑA program for municipal

``(B) IDENTIFICATION OF PROGRAMS AND RESOURCES.ÑIdentification of programs and re-

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including the attainment of interim goals and milestones.

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

"(I) IDENTIFICATION OF GOALS AND MILESTONES.—An identification of goals and milestones for attaining wastewater quality standards, including a projected date for attaining such standards as expeditiously as practicable but not later than 15 years after the date of the enactment of this section. For each of the waters listed pursuant to subsection (b), the Administrator shall prepare and implement a management program which is described in subsection (c) and which is implemented under this section. If the Administrator determines is of sufficient geographic area to warrant implementation, the Administrator shall prepare, and authority to control water pollution resulting from stormwater in another State, such State which is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of pollution from stormwater in such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States within which contribute significant pollution from stormwater in such State to such conference. The Administrator shall notify each State which is a party to such conference of the inclusion of Watersheds to the conference.

"(J) UTILIZATION OF LOCAL AND PRIVATE ENTRUSTS.—In developing and implementing a management program under this subsection, the Administrator shall utilize the services of local public and private agencies and organizations which have expertise in stormwater management.

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

"(L) ADMINISTRATIVE PROVISIONS.—

"(1) ADMINISTRATIVE REQUIREMENT.—Any report required by subsection (b) and any management program report required by subsection (c) shall be developed in cooperation with local, state, regional, and inter-state entities which are responsible for implementing the State stormwater management programs.

"(2) TIME PERIOD FOR SUBMISSION OF MANAGEMENT PROGRAMS.—Each management program shall be submitted to the Administrator within 30 months of the issuance by the Administrator of the final guidance under paragraph (1) and every 5 years thereafter. Each program submission after the initial submission following the date of enactment of the Clean Water Amendments of 1986 shall include a demonstration of reasonable further progress toward the goal of attaining water quality standards as set forth in subsection (c)(2) established for designated uses of receiving waters taking into account specific watershed conditions as well as any other condition that is applicable but not later than 15 years after approval of a State municipal stormwater management program under this section; the Administrator shall within 6 months of the receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall have an additional 6 months to submit its revised management program, and the Administrator shall approve or disapprove such revised program within 3 months of receipt.

"(3) FAILURE OF STATE TO SUBMIT REPORT.—If a Governor of a State does not submit a report or revised report required by subsection (b) or (c), the Administrator shall within 18 months after the date on which such report is required to be submitted under subsection (b) or (c), prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (b). Upon completion of the requirement of the preceding sentence and after notice and opportunity for a comment, the Administrator shall report to Congress of the actions of the Administrator under this section.

"(4) FAILURE OF STATE TO SUBMIT MANAGEMENT PROGRAM.—

"(A) PROGRAM MANAGEMENT BY ADMINISTRATOR.—Subject to paragraph (5), if a State fails to submit a management program or revised management program under subsection (c) or the Administrator does not approve such management program, the Administrator shall prepare and implement a management program for controlling pollution from stormwater in the navigable waters within the State, in the case of a State with an approved program under section 402, or the Administrator. Upon notice of approval by the State or the Administrator, the Administrator shall implement the revised stormwater management practices and measures which may be voluntary pollution prevention activities. Municipal stormwater dischargers operating under a permit continue in effect under the permit and, in writing, be subject to citizens suits under section 505.

"(B) ANTIBACKSLIDING.—Section 402(a) shall not apply to any activity carried out in accordance with a management program approved by the Administrator.

"(C) STATE REVISION OF ITS PROGRAM.—If, after taking into account the level of funding actually provided as compared with the requirements of this Act, the Administrator determines that a State has not followed this Act and does not NEO approval of such a revision, the Administrator shall prepare and implement a municipal stormwater management program for the State.

"(D) LOCAL MANAGEMENT PROGRAMS; TECHNICAL ASSISTANCE.—If a State fails to submit a management program under subsection (c), the Administrator shall develop, as a technical assistance program, a local public agency or organization which has expertise in stormwater management.

"(E) PROTECTION OF WATER RIGHTS.—Nothing in the Act shall supercede or abrogate rights to quants of water which have

May 11, 1995

CONGRESSIONAL RECORD — HOUSE H 4819

"(F) INTERSTATE MANAGEMENT CONFERENCE.—

"(1) CONVENING OF CONFERENCE; NOTIFICATION PURPOSE.—

"(A) CONVENING OF CONFERENCE.—If any portion of the navigable waters in any State which is implementing a management program approved under this section is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of pollution from stormwater in such State, the Administrator shall convene a management conference of all States which contribute significant pollution from stormwater to such portion. The Administrator shall notify each State which is a party to such conference of the inclusion of Watersheds to the conference.

"(B) NOTIFICATION.—If, on the basis of information available, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of pollution from stormwater in such State, the Administrator shall notify each State which is a party to such conference of the inclusion of Watersheds to the conference. The Administrator shall convene a management conference of all States which contribute significant pollution from stormwater to such portion. The Administrator shall notify each State which is a party to such conference of the inclusion of Watersheds to the conference.
been established by interstate water compacts, Supreme Court decrees, or State water laws.

“(F) LIMITATIONS.—This subsection shall not apply to any pollution which is subject to the Colorado River Basin Water Compact. The requirement that the Administrator convene a management conference shall not be subject to the provisions of section 321 of this Act.

“(2) STATE MANAGEMENT PROGRAM REQUIREMENT.—To the extent that the States reach agreement through such conference, the management programs of the States which are part of agreements among States which contribute significant pollution to the navigable waters or portions thereof not meeting applicable water quality standards or goals and required pursuant to subsection (g), the Administrator shall establish an initiative concerning future programs (in subcategory of stormwater discharges and improving the quality of the navigable waters).

“Pursuant to subsection (g), the Administrator shall establish, as an element of the water quality standards that are developed and implemented under this Act by not later than December 31, 2008.

“(g) GRANTS FOR STORMWATER RESEARCH.—

“(1) IN GENERAL.—To determine the most cost-effective and technologically feasible means of improving the quality of the navigable waters and develop the criteria required pursuant to subsection (g), the Administrator shall establish an initiative concerning future programs.

“(2) CONTENTS.—Each report submitted under paragraph (1), at a minimum shall—

“(A) describe the management programs being implemented by the States by types of affected navigable waters, categories and subcategories of stormwater discharges, and types of measures being implemented;

“(B) identify the activities and programs included in the implementation methods, including, but not limited to—

“(i) the findings and conclusions of the demonstration programs and research conducted so that such activities and programs are consistent with and assist the States in implementation of such management programs.

“(C) by striking subparagraph (B); and

“(D) describe the amount and purpose of grants awarded pursuant to subsection (g);

“(E) identify, to the extent that information is available, the progress made in reducing pollutant discharges from stormwater discharges and improving the quality of such waters;

“(F) include recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from stormwater; and

“(G) identify the activities and programs of departments, agencies, and instrumentalities of the United States that are inconsistent with the municipal stormwater management programs implemented by the States under this section and recommended modifications so that such activities and programs are consistent with and assist the States in implementation of such management programs.

“(2) PUBLICATION.ÐThe Administrator shall publish final guidance under this subsection not later than 6 months after the date of the enactment of this subsection and shall publish final guidance under subsection (c) not later than 6 months after the date of enactment. The Administrator shall periodically review and revise the final guidance upon adequate notice and opportunity for public comment at least once every 3 years after its publication.

“(3) MODEL MANAGEMENT PRACTICES AND MEASURES DEFINED.—For the purposes of this subsection, the term ‘model management practices and measures’ means economically achievable measures for the control of pollutants from stormwater discharges with the most cost-effective degree of pollutant reduction achievable through the application of the best available practices, technologies, processes, siting criteria, operating methods, or control strategies.

“(4) ENFORCEMENT WITH RESPECT TO MUNICIPAL STORMWATER DISCHARGERS VIOLATING STATE MANAGEMENT PROGRAMS.—Municipal stormwater dischargers that do not comply with State management program requirements under subsection (c) are subject to applicable enforcement actions under sections 309 and 505 of this Act.

“(m) ENTRY AND INSPECTION.—In order to carry out the objectives of this section, an authorized representative of a State, upon presentation of his or her credentials, shall have a right of access to, upon, or through any property at which a stormwater discharge or records required to be maintained under the State municipal stormwater management program are located.

“(n) LIMITATION ON DISCHARGES REGULATED UNDER WATERSHED MANAGEMENT PROGRAM.—

“Municipal stormwater discharges regulated under section 321 in a manner consistent with this section shall not be subject to this section; and

“(o) CONFORMING AMENDMENTS TO INDUSTRIAL STORMWATER DISCHARGE PROGRAM.—

“Section 402(p) (33 U.S.C. 1342(p)) is amended—

“(1) in the subsection heading by striking ‘MUNICIPAL AND’;

“(2) in paragraph (1) by striking ‘1994’ and inserting ‘2001’;

“(3) by adding at the end of the paragraph (1) the following: ‘This subsection does not apply to municipal stormwater discharges which are covered by section 322’;

“Paragraph (4) of subsection (a) by redesignating subparagraphs (C) and (D) and by redesignating subparagraph (E) as subparagraph (C); and

“(5) in paragraph (3) the following:

“(A) by striking the heading for subparagraph (A); and

“(B) by moving the text of subparagraph (A) after the paragraph heading; and

“(C) by striking subparagraph (B);

“(6) in paragraph (4) the following:

“(A) by striking the heading for subparagraph (A); and

“(B) by moving the text of subparagraph (A) after the paragraph heading;

“(C) by striking ‘and (2)(C)’; and

“(D) by striking subparagraph (B);

“(E) by redesigning subparagraph (5) as paragraph (6); and

“(F) by redesigning paragraph (6) as paragraph (5); and

“(7) in paragraph (5) as so redesignated—
Mr. SHUSTER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The votes were taken by electronic device, and there were—aye s 159, noes 258, not voting 17, as follows:

[Roll No. 316]

AYES—159

Abercrombie (HI)            Clay (OH)          Eshoo (VA)
Ackerman (NY)               Clayton (GA)        Evans (GA)
Andrews (MD)                Clyburn (SC)        Farr (CA)
Bass (GA)                   Collins (MI)        Fattah (PA)
Barrett (WI)                Conyers (GA)        Fausto (CA)
Becerra (CA)                Coyne (IL)          Fields (CA)
Belk (NC)                   Deal (GA)           Filner (CA)
Bensu (CA)                  DeFazio (NY)        Flake (AZ)
Berman (CA)                 Delauro (CT)        Fioletta (PA)
Bilirakis (FL)              Delahunt (MA)       Forbes (PA)
Bonior (NY)                 Deutsch (NY)        Ford (MI)
Borski (PA)                 Dicks (WA)          Furse (VA)
Bouck (PA)                  Dingell (MI)        Gejdenson (ID)
Brown (CA)                  Doggett (TX)        Gephardt (MO)
Brown (OH)                  Doggett (NY)        Ghing (TN)
Bryant (TX)                 Durnin (CT)         Gianforte (MT)
Cardin (MD)                 Engel (NY)          Gilchrest (MD)

Mr. SHUSTER. Mr. Chairman, I rise in strong opposition to this amendment.

Mr. Chairman, this amendment should be soundly defeated, because it really destroys our effort to reform the stormwater provisions in the bill.

We have provided for State-developed stormwater management programs. Under this amendment, private firms would continue to be regulated or unregulated, depending on the standard industrial classification code of the industry, not on whether or not it contributed pollution to stormwater discharges. This is another example of regulatory overkill, of one-size-fits-all.

As a result, if a company falls within a particular industry code, under this amendment it would have to get a stormwater permit even and get this, even if the company happens to be located in an office suite and has no outside facilities. It makes no sense.

This amendment leaves this broken program in place for over 7 million commercial and smaller industrial facilities that are covered by the stormwater permitting program today, merely extending the permit deadline until the year 2001. This amendment also would fragment the Stormwater Program into two parts, increasing rather than decreasing the bureaucracy.

In contrast, our bill provides the needed regulatory relief and will protect the environment from stormwater discharges. Our bill repeals section 402(p) and regulates stormwater in a manner similar to other nonpoint sources and discharges. However, unlike the section 319 nonpoint program, our Stormwater Program will require enforceable pollution prevention plans. If necessary, the program also provides for the general and site specific permits.

I would emphasize that we have a letter from the association of State and Interstate Water Pollution Control Administrators strongly supporting our provision in the bill and opposing this amendment.

Mr. Chairman, I urge the defeat of this amendment.

The CHAIRMAN pro tempore (Mr. Hobson). The question is on the amendment offered by the gentleman from California [Mr. MINETA].

The question was taken; and the ayes appeared to have it.

Mr. SHUSTER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The votes were taken by electronic device, and there were—aye s 159, noes 258, not voting 17, as follows:

[Roll No. 316]

AYES—159

Abercrombie (HI)            Clay (OH)          Eshoo (VA)
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Andrews (MD)                Clyburn (SC)        Farr (CA)
Bass (GA)                   Collins (MI)        Fattah (PA)
Barrett (WI)                Conyers (GA)        Fausto (CA)
Becerra (CA)                Coyne (IL)          Fields (CA)
Belk (NC)                   Deal (GA)           Filner (CA)
Bensu (CA)                  DeFazio (NY)        Flake (AZ)
Berman (CA)                 Delauro (CT)        Forbes (PA)
Bilirakis (FL)              Delahunt (MA)       Ford (MI)
Bonior (NY)                 Deutsch (NY)        Furse (VA)
Borski (PA)                 Dicks (WA)          Furse (VA)
Bouck (PA)                  Dingell (MI)        Gejdenson (ID)
Brown (CA)                  Doggett (TX)        Gephardt (MO)
Brown (OH)                  Doggett (NY)        Ghing (TN)
Bryant (TX)                 Durnin (CT)         Gianforte (MT)
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(b) STANDARDS.—

(i) ADOPTION BY STATES.—A State shall adopt water quality standards for coastal recreation waters within 3 years after the date of publication of criteria under section 304(a)(13) of the Federal Water Pollution Control Act not later than 3 years after the date of such publication. Such water quality standards shall be developed in accordance with the requirements of section 303(c) of the Federal Water Pollution Control Act. A State shall incorporate such standards into all programs for which water quality standards for coastal recreation waters are used.

(ii) FAILURE OF STATES TO ADOPT.—If a State has not complied with subparagraph (A) by the last day of the 3-year period beginning on the date of publication of criteria under section 304(a)(13) of the Federal Water Pollution Control Act, the Administrator shall promulgate water quality standards for coastal recreation waters for the State under applicable provisions of section 303 of the Federal Water Pollution Control Act. The water quality standards for coastal recreation waters shall be consistent with the criteria published by the Administrator under such section 304(a)(13). The State shall use the standards issued by the Administrator in implementing all programs for which water quality standards for coastal recreation waters are used.

(2) COASTAL BEACH WATER QUALITY MONITORING.—Title IV (33 U.S.C. 1341-1345) is amended by adding at the end thereof the following new section:

SEC. 406. COASTAL BEACH WATER QUALITY STANDARDS.

(a) MONITORING.—Not later than 9 months after the date on which the Administrator publishes revised water quality criteria for coastal recreation waters under section 304(a)(13), the Administrator shall publish regulations specifying methods to be used by States to monitor coastal recreation waters, during periods of use by the public, for compliance with applicable water quality standards for those waters and protection of the public safety. Monitoring requirements established pursuant to this subsection shall, at a minimum—

(1) specify the frequency of monitoring based on the periods of recreational use of such waters;

(2) specify the frequency of monitoring based on the extent and degree of use during such periods;

(3) specify the frequency of monitoring based on the proximity of coastal recreation waters to pollution sources;

(4) specify methods for detecting short-term increases in pathogens in coastal recreation waters;

(5) specify the conditions and procedures under which discrete areas of coastal recreation waters may be exempted from the monitoring requirements of this subsection, if the Administrator determines that an exemption will not impair—

(A) compliance with the applicable water quality standards for those waters; and

(B) protection of the public safety; and

(6) require, if the State has an approved coastal zone management program under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458), that each coastal zone management agency of the State provide technical assistance to local governments within the State for ensuring that monitoring of coastal recreation waters is as free as possible from floatable materials.
"(b) Notification Requirements.—Regulations promulgated pursuant to subsection (a) shall require States to notify local governments and the public of violations of applicable water quality standards for State coastal recreational waters. Notifications pursuant to this subsection shall include, at a minimum—

(1) prompt communication of the occurrence, nature, extent, and identification of such a violation, to a designated official of a local government having jurisdiction over land adjoining the coastal recreational waters for which a violation is identified;

(2) posting of signs, for the period during which the violation continues, sufficient to give notice to the public of a violation of an applicable water quality standard for such waters and the potential risks associated with body contact recreation in such waters;

(c) FLOTABLE MATERIALS MONITORING PROCEDURES.—The Administrator shall—

(1) issue guidance on uniform assessment and monitoring procedures for floatable materials in coastal recreation waters; and

(2) specify the conditions under which the presence of floatable material shall constitute a threat to public health and safety.

(d) DELEGATION OF RESPONSIBILITY.—A State may delegate responsibility for monitoring and posting of coastal recreational waters pursuant to this section to local government authorities.

(e) REVIEW AND REVISION OF REGULATIONS.—The Administrator shall review and revise regulations published pursuant to this section periodically.

(f) DEFINITIONS.—For the purposes of this section—

(1) the term ‘coastal recreation waters’ means Great Lakes and marine coastal waters commonly used by the public for swimming, bathing, or other similar body contact purposes; and

(2) the term ‘floatable materials’ means any matter that may float or remain suspended in the water column and includes plastic, aluminum cans, wood, bottles, and paper products.

(3) STUDY TO IDENTIFY INDICATORS OF HUMAN-SPECIFIC PATHOGENS IN COASTAL RECREATION WATERS.—

(A) STUDY.—The Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall conduct an ongoing study to provide additional information to the extent feasible necessary to develop better indicators for directly detecting in coastal recreational waters the presence of viruses and other pathogens which may be harmful to human health.

(B) REPORT.—Not later than 4 years after the date of the enactment of this Act, and periodically thereafter, the Administrator shall submit to the Congress pursuant to section 204, line 14, strike ‘‘406’’ and insert ‘‘407’’.

Mr. PALLONE. Mr. Chairman, my amendment provides for a national uniform beach water quality testing and monitoring program that provides adequate protection for swimmers and flexibility for the States. It is basically oriented toward providing, if I could call it, a right-to-know for bathers and swimmers in the Nation’s waters that they should not be swimming there. The beach water quality is such that they should not be bathing in those particular waters or at that particular beach.

Again, the amendment provides for a nationally uniform beach water quality testing and monitoring program for bathers and swimmers, essentially to assure that bathers and swimmers on the Nation’s beaches have a right to know and should know when the beaches are of such quality that they should not be swimming there.

The reason we need this amendment is because coastal areas are the most populated areas of the country and also the areas most rapidly being developed. The growth in population demands on sewer systems are extreme and have resulted in harmful discharges into coastal waters with human waste. This human waste is the leading cause of human health problems in coastal waters.

The coastal economy and the economy of our Nation in general is inextricably linked to the quality of our coastal waters. Coastal tourism, recreation, commercial fishing are all multibillion-dollar industries and create an estimated number of jobs. The health and safety of coastal residents and visitors to coastal waters depend on it.

States have highly inconsistent water quality standards for sewage contamination, beach water quality testing, and beach closing standards and criteria for monitoring. In some States it is completely absent. Most States have not even adopted EPA’s recommended testing methods.

Essentially, this amendment is based on the Beaches, Environmental Assessment, Closure and Health Act of 1993, long championed by my former colleague, Mr. Hughes from New Jersey.

I want to address the author of the amendment with regard to the funding if this, whether any consideration has been given, or CBO has been asked to give, any sort of estimate as to what the cost of this might be applied nationwide.

Mr. PALLONE. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. Mr. Chairman, I rise in opposition to the gentleman’s amendment, which is a mandate on States to monitor beaches and incorporates criteria for pathogens on the State water quality standards, and this would appear to me to be maybe one of the first examples we would have of a potentially unfunded mandate.

I wanted to address the author of the amendment with regard to the funding if this, whether any consideration has been given, or CBO has been asked to give, any sort of estimate as to what the cost of this might be applied nationwide.

Mr. PALLONE. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. Mr. Chairman, I yield to the gentleman from New Jersey.

Mr. PALLONE. I would say, first of all, again, I would point out that this amendment is exactly the same as legislation that passed in the last two
Congress and that there were estimates made. The funding provided in the bill for the grant programs is basically in there to provide adequate funding for the States on a matching grant basis to do this kind of monitoring.

Now, again, I am not saying a lot of States do not already do this. Some do, some do not. We are trying to do is provide uniform criteria and provide the States with some funding so that they can administer the program.

Mr. CLINGER. Reclaiming my time, I understand that while the amendment did pass in the previous two Congresses, it is a very minor debate. We really have had not a full-scale discussion of this issue.

I would also point out that in the last two Congresses we did not have on the books, albeit not applicable, we did not have on the books an unfunded mandates statute.

Mr. PALLONE. I would point out to the gentleman that, you know, again, from a procedural point of view, that unfunded mandate legislation, of course, does not go into effect until next Congress. I would maintain there is adequate funding in this bill, at least the authorization for it, to provide adequate funding to the States to do this type of monitoring.

Mr. CLINGER. It strikes me there are analogies here to the Great Lakes initiative where we have had some indication what the cost might be, but the costs became wildly beyond anybody’s wildest dreams what it might actually involve.

At any rate, Mr. chairman, I must oppose the amendment, as the gentleman from New Jersey has indicated, that that State, New Jersey, has adopted pathogen criteria on their water quality standards. That is certainly something every State can and perhaps should consider, but what this amendment would do would be to force that, would make other States do precisely the same thing.

As I say, New Jersey may, and obviously does, consider it useful to have pathogen standards, but other States may disagree or may have different criteria that they would prefer to pursue.

Point sources do not discharge pathogens. It is a very difficult task, sometimes almost impossible, to determine the source, so it is really unclear how a State may meet a pathogen standard if forced to adopt one, which this amendment would ultimately require, a forced adoption of pathogen standards.

So New Jersey may, indeed, think it is useful to monitor beaches. Other States may agree, and certainly that would be, in my personal idea, would be a good idea, but to force them under this, in this mechanism, I think is wrong.

H.R. 961 does, I would point out, acknowledge the importance, extreme importance, of monitoring by requiring EPA to develop monitoring guidance, to give guidance to the States on how to go about monitoring, but it is not a mandate. It is not something that is going to be forced, assuming again with Washington total wisdom, total knowledge how to do this. We have enough mandates already.

Mr. Chairman, I urge a “no” vote. Mr. TORRICELLI. Mr. Chairman, I move to strike the last word.

Mr. Chairman, there have been some Government programs that we have seen throughout the years that have worked. We have seen some that have failed.

But few, from the perspective of my State of New Jersey, have been as successful as the ocean testing and monitoring program.

Since 1974, the State of New Jersey has developed a program to ensure to those who visit our beaches, those in our $18 billion tourist industry, if you swim in the waters off our shore, it is safe, it is clean, it is a place you would want to take your family. Today, 180 different locations and 143 bays and rivers are monitored continuously to assure that level of safety, and to anyone who in any summer visits those places would find it impossible and an overwhelming difference in the quality of the water and the enjoyment of your vacation time at a New Jersey resort.

We did it, Mr. Chairman, because we had no choice. There were allegations of sickness, implications of health, and, indeed, the economic losses were mounting. Restoring confidence to families and to business became critical.

In the last Congress, the Members of this institution recognized the success of this program and overwhelmingly, Democrats and Republicans, 320 strong, voted to have just such a program across the country. They were right then. The gentleman from New Jersey [Mr. PALLONE] is right now.

This is a program we should have on a national basis. It makes about as little sense, Mr. Chairman, for one State to have ocean monitoring and another not to have it as if the States have individual air quality standards. It is only a few miles from the beaches of Coney Island, NY, to the beaches of Sandy Hook, NJ. If one State will have high standards and monitor and attempt to assure a quality of water and another State will not, it is no more than a swift breeze, an ocean current away from one State violating the standard of another.

Indeed, it goes to the very issue of federalism. These are the kinds of standards that were contemplated in forming a union to assure uniformity, safety for all of the States and their interests.

I trust, Mr. Chairman, that in each of our States we recognize the potential loss economically and in quality of life to people lose confidence in the basic American right on a weekend or a summer afternoon to take your child and your family to a beach. That is what life is all about, and if the Federal Government can mean anything to our families, for all of the excesses of other things it has done, all the programs that did not work, all the things we should eliminate, do we really want to go so far that as a Federal Government we cannot say to an individual American family, “We will assure you will know when your child walks into an ocean resort, that water will be safe, it will be to the standards, whether it is the Oregon, California, New York, New Jersey or Florida?”

That is what the gentleman from New Jersey [Mr. PALLONE] asks, and almost to the person, Democrats and Republicans, have voted for exactly that in the past.

Today, we ask you to do so again.

I congratulate the gentleman from New Jersey [Mr. PALLONE] for offering this amendment. I am very proud to have joined with him in his sponsorship, and I am very proud that my State uniquely has taken the lead in setting these high standards.

Mr. Chairman, the alternative situation is this: Some States will offer their citizens no assurance at all. Twenty-two other States will have 11 different standards, conflicting, lower but without any minimum Federal guarantee. As we offer this for the air we breathe and the water we drink, the ocean that would receive our families should have no less.

Mr. SHUSTER. Mr. Chairman, I move to strike the requisite number of words.

I will not take the 5 minutes. I simply rise in strong opposition to this amendment.

New Jersey certainly can impose whatever regulatory requirements they have, but to mandate what New Jersey says is good for New Jersey on the other 49 States, I think, is wrong.

We have required EPA to develop monitoring guidance, but not a mandate. This is just one mandate, and it should be defeated.

Mr. MINETA. Mr. Chairman, I move to strike the requisite number of words.

Mr. SHUSTER. Mr. Chairman, I support the gentleman’s amendment.

Water pollution at beaches poses a special health problem because these are the places where people, including numerous children, come into direct contact with dirty water. With little protection, and sometimes without warning, people are exposed to serious water-borne diseases.

Coastal waters are also particularly susceptible to pollution because virtually all of the water eventually drains to the sea. As water flows toward the coast, pollutants are picked up and become increasingly concentrated. The result is a very serious health problem and a very serious environmental problem.

The Amendment provides very necessary protection to the public who visits our coastal recreation areas. It would require EPA to issue water quality criteria for pathogens, and States to establish water quality standards, in
mand a recorded vote.

The vote was taken by electronic de-

Mrs. KENNELLY changed their vote

``aye'' to ``no.''

So the amendment was rejected.

The result of the vote was announced as

above recorded.

The CHAIRMAN pro tempore (Mr.

HOBSON). Are there further amend-

ments to title III of the bill?

AMENDMENT OFFERED BY MR. MINETA

Mr. MINETA. Mr. Chairman, I offer an amendment, amendment No. 36. The

CHAIRMAN pro tempore (Mr. HOBSON). The CHAIRMAN will designate the amend-

ment. The text of the amendment is as

folows:

Amendment offered by Mr. MINETA: Page

170, LINE 19, STRIKE 'ISSUING''.

Page 170, line 20, before ''any'' insert ''issuing''.

Page 170, line 24, strike or''.

Page 171, line 1, before ''any'' insert ''issuing''.

Page 171, line 3 strike the period and insert a semicolon.

Page 171, after line 3, insert the following:

``(8) granting under section 301(g) a modifi-

cation of the requirements of section

301(b)(2)(A);''

``(6) issuing a permit under section 402

which under section 301(p)(5) modifies the re-

quirements of section 301, 302, 306, or 307;

``(5) extending under section 303(k) a dead-

line for a point source to comply with any

limitation under section 301(b)(1)(A), 301(b)(2)(A), or 301(b)(2)(E) or otherwise modi-

fying section 303(k) the conditions of a permit under section 402:

``(4) issuing a permit under section 402

which modifies under section 301(q) the re-

quirements of section 301, 302, 306, or 307;

``(3) renewing, reissuing, or modifying a

permit to which section 401(a)(1) applies if the

permittee has received a permit modifi-

cation under section 301(q) or 301(r) or the

exception under section 402(c)(2)(F) applies;

``(2) waiving or modifying under section

307(h) pretreatment requirements of section

307(b):

``(1) allowing under section 307(g) any per-

son that introduces silver into a publicly

owned treatment works to comply with a

}
Mr. MINETA. Mr. Chairman, I want to thank the Chairman for his diligence in chairing the Committee of the Whole House.

Mr. Chairman, this bill would allow new waivers for as many as 70,000 chemical pollutants, waivers which would allow some to trade air pollution credits in one area for the right to dump extra pollution into the river in another area, waivers to industrial polluters discharging into municipal sewer systems, waivers for innovative technologies, waivers for mining, pulp and paper, iron and steel, photo processing, electric power, cattle, oil and gas, and waivers from water quality standards if you say you are in a watershed. And this is not an exhaustive list.

As a result, an enormous number of decisions are going to have to be made about waivers, and those decisions taken together will have an enormous effect on the environment and the costs of compliance. In fact, taken all together, these decisions on all these waiver requests will be very important regulatory decisions.

There has been a lot of talk in recent months about cost-benefit analysis and risk assessment, and how important these tools are when making regulatory decisions involving tradeoffs between costs and benefits. Many have defended the new cost-benefit and risk assessment proposals as better ways to make regulatory decisions, and they have denied that they were merely trying to hamstring the issuance of new regulations.

Here's our chance to show what it is that really means. The waiver decisions in H.R. 961 would constitute important regulatory decisions and they should be subject to an assessment of the risks they pose. My amendment would apply risk assessment to those aspects of the bill where it is most desperately needed.

Oponents of this amendment will say that there is no need to apply the risk assessment provisions to these waivers since the risk assessment will have been done in establishing the original standard from which the waiver is granted. But that argument just further justifies my amendment.

When the basic requirements from which waivers are requested are put in place, a risk assessment determined that these requirements were justified by the reduction of risk, shouldn't we know what the risks are in the event that this determination has been determined to be justified? Sound risk assessment demands no less.

My amendment expands the use of risk assessment under the bill. This amendment would simply say that in granting these waivers, EPA should do the same risk assessment that this bill would require of many other regulatory decisions. If it's a good way to make regulatory decisions, then let's use it. We owe it to our constituents to be able to say that when industry receives a waiver from the basic, minimum requirements of the Clean Water Act, we required that there be an assessment of the risks posed by such a waiver.

Support my amendment to achieve consistency in and expand the use of risk assessment.

Mr. MICA. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendment.

Mr. Chairman, I totally respect the gentleman from California and his leadership on many issues in the transportation and public works arena, but I rise this afternoon in strong opposition to the amendment he has proposed.

Let me say and shall I say that this amendment was very soundly rejected in the committee by a very large and wide bipartisan majority of 38 to 18.

Earlier in the debate, the chairman of the committee, the gentleman from Pennsylvania, referred in his comments on the floor to the liberals big lie strategy to try and defeat this bill.

This amendment is predicated on one of the small fibs that makes up the big lie strategy, I am afraid to say.

This amendment is based on the fiction that risk assessments only apply when standards are being made stronger and do not apply if they are being made weaker. It masquerades as what is good for the goose is good for the gander in the form of an amendment.

This is simply not true, and I will demonstrate that fact in just a minute.

First, let me tell you why the distinction between generally applicable regulations and site-specific decisions. The reason for this distinction is already clear to the sponsor of this amendment.

I might note that the dissenting views in the committee report support national affluence limitations over site-specific standards because they allow the regulator to implement the Clean Water Act without exhausting resources on complex resource-intensive scientific adjustments, such as those required under many of the waiver provisions of H.R. 961.

I agree that the amount of risk assessment analysis necessary to make up a site-specific permit modification should be left up to the EPA or the State. Some site-specific modification will undoubtedly be needed, but others will not. As the report language warns, a mandatory risk assessment would unnecessarily exhaust precious resources in these cases. Let me tell the Members with this amendment is based on a fib.

The fact is the bill already allows a what-is-good-for-the-goose-is-good-for-the-gander philosophy. There are simply two separate flocks of geese here. The first flock are local site-specific determinations. Site-specific permit modification, regardless of whether a limitation is being made more or less stringent, will not automatically trigger a risk assessment.

For instance, under section 402, EPA can tighten the limitations in a facilities permit based on new site-specific information showing greater ecological harm than was previously expected. H.R. 961 does not require EPA to perform a risk assessment to make the permit more stringent.

The second flock, using that analogy, are significant regulations, such as effluent limitation guidelines for a class of industry. They must be supported by sound risk assessment, regardless of whether they are raising or lowering regulatory requirements, because they can have potentially broad and important effects on a large number of people.

For instance, any deregulation that may be necessary to refocus EPA's priorities will be subject to a risk assessment. What is particularly ironic about this amendment is that it actually does the opposite of its stated purpose. Far from treating all requirements equally, the list of waivers and permit modification it would subject to risk assessment do not include any modification that would tighten permit requirements.

The Mineta amendment before us would not apply risk assessment when EPA wants to tighten requirements for a permittee, but magically, risk assessment would be necessary before a permittee would be granted any kind of waiver. This is the micromus of an extreme environmentalist strategy: scream long, scream loud about any alleged advantage so-called polluters are getting, while you slip in your own fix that gives you the very advantage you were just condemning.

The American people have really been turned off by this mixture of arrogance and hypocrisy that has been displayed in the past, and this is no place for this today. That is why Congress has overwhelmingly passed risk assessment in every consistent vote before this body by wider and wider margins. That is why we must defeat this amendment. It is an ill-conceived amendment. It does just the opposite of what we need to do.

Mr. BORSKI. Mr. Chairman, I move to strike the last word.
If we are serious about applying risk analysis, then there is even more reason for granting them. If they cannot measure up, they should not be allowed.

This bill allows waivers of the Clean Water Act’s requirements to limit discharges into our Nation’s rivers, lakes, and streams.

The Mineta amendment would apply the same risk analysis as other parts of the Clean Water Act’s requirements to limit discharges into our Nation’s rivers, lakes, and streams.

The vote was taken by electronic device, and there were—aye 152, noes 271, not voting 11.

The text of the amendments is as follows:

(Amendments offered by Miss Collins of Michigan)

Page 62, after line 14, insert the following:

(a) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(b) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(c) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(d) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(e) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(f) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(g) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(h) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(i) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(j) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(k) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(l) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(m) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(n) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(o) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(p) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(q) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(r) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(s) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(t) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(u) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(v) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(w) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(x) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(y) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(z) The Administrator shall take into account, in ascertaining the meaning of those waivers, areas where they won’t harm the environment, this is the right amendment.

(Amendments offered by Miss Collins of Michigan)

Miss Collins of Michigan. Mr. Chairman, I have a series of amendments at the desk, amendments 9, 10, 11, 12, and 13. I ask unanimous consent that they be considered en bloc. It is my understanding that the majority has no objection to this. The CHAIRMAN pro tempore. The Clerk will first designate the amendments.

The text of the amendments is as follows:

(Amendments offered by Miss Collins of Michigan)

Page 62, after line 14, insert the following:

(d) Consideration of consumption patterns—In developing human health and aquatic life criteria under this subsection, the Administrator shall take into account, where practicable, the consumption patterns of diverse segments of the population, including segments at disproportionately high risk, such as minority populations, children, and women of child-bearing age."

Page 62, line 15, strike “(d)” and insert “(e)”. 

The Clerk announced the following pair:

On this vote: Mrs. Collins of Illinois for, with Mr. Bono against.

Mrs. MEYERS of Kansas changed her vote from “aye” to “no.”

Mr. COSTELLO changed his vote from “no” to “aye.”

The result was announced as above recorded.
Page 63, line 4, strike "(e)" and insert "(f)"
Page 63, line 24, strike "(f)" and insert "(g)"
Page 64, line 4, strike "(g)" and insert "(h)"
Page 73, strike lines 19 through 22 and insert the following:
(c) FISH CONSUMPTION ADVISORIES.--Section 410 (33 U.S.C. 1375) is amended by adding at the end the following:
"(o) FISH CONSUMPTION ADVISORIES.--
(1) POSTING.--Not later than 18 months after the date of enactment of this Act, the Administrator shall propose and issue regulations establishing minimum, uniform requirements and procedures for posting signs at appropriate points of public access, on navigable waters or portions of navigable waters that significantly violate applicable water quality standards under this Act or that are subject to a fishing or shell-fishing ban, advisory, or consumption restriction (issued by a Federal, State, or local authority) due to fish or shellfish contamination.
(2) SIGNS.--The regulations shall require the signs to be posted under this subsection--
(A) to indicate clearly the water quality standard that is being violated or the nature and extent of the restriction on fish or shellfish consumption;
(B) to be in English, and when appropriate, any language used by a large segment of the population in the immediate vicinity of the navigable waters;
(C) to include a clear warning symbol; and
(D) to be maintained until the body of water is consistently in compliance with the water quality standard or until all fish and shellfish consumption restrictions are terminated for the body of water or portion thereof.
Page 73, after line 18, insert the following:
(n) FISH AND SHELLFISH SAMPLING; MONITORING.--Not later than 18 months after the date of enactment of this Act, the Administrator shall propose and issue regulations to establish uniform and scientifically sound procedures for fish and shellfish sampling and analysis and uniform requirements for monitoring of navigable waters that do not meet applicable water quality standards under this Act or that are subject to a fishing or shell-fishing ban, advisory, or consumption restriction.
Page 73, line 19, strike "(c)" and insert "(d)"
Page 203, after line 8, insert the following:
SEC. 410. ENVIRONMENTAL JUSTICE REVIEW.
Section 402 (32 U.S.C. 1342) is further amended by adding at the end the following:
(u) ENVIRONMENTAL JUSTICE REVIEW.--No permit may be issued under this section unless the Administrator or the State, as the case may be, first reviews the proposed permit to identify and reduce disproportionately high and adverse human health impacts to the health of, or environmental exposures of, minority and low-income populations.
Redesignate subsequent sections of the bill accordingly. Conform the table of contents of the bill accordingly.
Page 213, after line 14, insert the following:
SEC. 508. DATA COLLECTION.
Section 516 (33 U.S.C. 1314) is amended by inserting after subsection (e) the following:
(f) DATA COLLECTION.--
(1) IN GENERAL.--The Administrator shall, on an ongoing basis--
(A) collect, maintain, and analyze data necessary to ensure the comparability of the rate of the average Michigan resident and the rate of the average Michigan resident with a specific race and income and exposure to unsafe environmental factors.
Studies by the EPA, the National Law Journal, the University of Michigan, the United Church of Christ, and the Council on Environmental Quality have demonstrated that minority and low-income neighborhoods are more likely to be situated near major sources of pollution than are other neighborhoods. For example, three out of the largest hazardous waste disposal facilities are located in minority areas, including Emil, AL, site of the biggest toxic landfill in the United States. Also, the Nation’s biggest concentration of hazardous waste sites is on Chicago’s South Side, where the residents are predominantly African-American.

A personal example concerns my hometown of Detroit where the University of Michigan researchers assessed the relative influence of income and race on the distribution of waste management facilities. Their study found that minority residents were four times more likely than white residents to live within a mile of commercial hazardous waste facility, and that race was a much greater factor of proximity to the site than was income. In the name of equality and decency, I ask all my colleagues to support this en bloc amendment.

In the name of equality and decency, I ask all my colleagues to support this en bloc amendment.

Mr. SHUSTER. Mr. Chairman, I rise in opposition to the amendment.

I must reluctantly oppose these amendments from my good friend. These amendments simply represent the mandating of more regulations so that specific groups will get special protection.

The goal of all environmental legislation is to protect all people from unreasonable harms. The EPA already has sufficient authority to consider the effects on sensitive subject populations in the design of their standards. EPA already is factoring environmental justice considerations into all of its programs. And nothing in this legislation would prohibit those considerations.

We simply believe that we should not be creating new regulations. We should not be forcing EPA, we should not be micromanaging EPA to do what they already have the authority to do if they decide it is in the best interests of the environment in our country.

Further, section 323(b) of our bill requires risk assessment used to develop water quality criteria to provide a description of the specific populations subject to the assessment.

So for all of those reasons, while these are very well-intentioned en bloc amendments, I must urge their defeat.

Mr. MINETA. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I rise in strong support of the en bloc amendment offered by our fine colleague, the gentlewoman from Michigan.

These amendments attempt to provide protection against disease caused by consumption of contaminated fish and shellfish caught from polluted waters.

Waterborne diseases are hazardous to your health. We may recall that more than 100 people died in Milwaukee when they drank polluted water. Eating contaminated seafood is no less deadly.

This amendment would require scientifically sound sampling and monitoring of fish and shellfish, as well as posting of signs on navigable waters that significantly violate applicable water quality standards. Doing so will let us know if the catch is safe to eat, and if it is not, warn people against eating it.

Low-income and minority communities often are exposed to a higher level of water pollution than society as a whole. To adequately protect residents of these at-risk communities, we need good information and special recognition of their disproportionate exposure.

That is what this amendment will do. It would require EPA to take steps to minimize the health and environmental impacts on poor and minority populations when issuing discharge permits. It would also require EPA to take into account consumption patterns of poor and minority when developing water quality criteria.

These efforts will help address the higher risks facing these communities. I urge support of the Collins en bloc amendment.

Mrs. MEEK of Florida. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in strong support of the Collins en bloc amendments.

Mrs. MEEK of Florida. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in strong support of the Collins en bloc amendments, and I want to tell this group much progress has been made since the Clean Water Act has been enacted. It is one of our Nation’s success stories, but it still remains to be done. One-third of the Nation’s shellfish beds are still closed or restricted to harvest; one-half of the Nation’s rivers are polluted; and there are still great disparities as to how States monitor pollution and warn citizens of polluted waters.

Florida was once called the polluted paradise. Many other States still have that distinction, they still can be called polluted areas.

This, Mr. Chairman, puts many Americans at risk. Studies show that many risks facing these communities, the poor search for fish and use fish for subsistence. They live from their daily fishing catch.

The clean water bill before us today is truly a misnomer, Mr. Speaker. It will not provide clean water. It does nothing to address environmental inequities faced by millions of minority and low-income Americans. Their communities are exposed to disproportionately high levels of pollutants that end up in the water.

This environmental injustice is real, Mr. Chairman, and it must be stopped. But the bill before us today is virtually silent on environmental injustice. It ignores the years of environmental abuse suffered by minority and low-income communities across this great country of ours, whether they are farm workers, inner-city teenagers, native Americans on reservations, or minorities in small towns.

The Collins amendments will begin to address some justice to those Americans who face daily environmental threats to their health. Mr. Chairman, I urge my colleagues in support of environmental justice to support the Collins amendments.

Mr. BECERRA. Mr. Chairman, I move to strike the requisite number of words.

(Mr. BECERRA asked and was given permission to revise and extend his remarks.)

Mr. BECERRA. Mr. Chairman, I also rise in strong support of this en bloc amendment offered by my esteemed colleague from Michigan. It is true that at times we try to do our utmost to protect our societies and our communities from pollution, from hazards, from the environment when we create these hazards. But oftentimes we do not succeed.

It is unfortunate that current law has not done the job of protecting certain communities, mostly minority and low-income communities, minority communities, when it comes to toxic environmental hazards. Let me give some very concrete examples.

I represent a portion of the city of Los Angeles. I happen to represent, in portions of my district, some of the wealthiest individuals in Los Angeles, and at the same time in another portion of my district I represent individuals of very low income.

On one end of my district I have no freeways crossing through the district. I have no problems with waste dumps. I have no problems with incinerators or projects for incineration plants or for pipelines for oil to be passed through. But on the other side of my district, I do have a district that has within its 5-mile radius around seven prison facilities that have been housed there over the last 10 years as a result of a supposed need by the county to have a place to house prisoners. We have a toxic waste dump that is on the EPA site for cleanup, and it must be taken care of because it is emitting pollutants and hazardous substances, and I had, at one point nearby, a proposal to build a toxic waste incineration plant in the district or close to the district. It has not gone through, but clearly present law was not enough to protect this. Current legislation is not enough to protect, and we need the en bloc amendments by the gentlewoman from Michigan to make sure we do so, because there is a danger, it is clearly the case, the facts show it, that disproportionately minority communities, low-income communities share the exposure, the highest exposure and the burden of that exposure of those environmental hazards.

May 11, 1995

CONGRESSIONAL RECORD - HOUSE
H 4829
Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it is clear that all of us do not represent districts that are exactly alike. My district is very similar to Congressman Becerra's. We have right now a Superfund site. I do not think we can address water in this country without addressing health status in this country. And unfortunately, and this is before us, it fails to address this issue from the standpoint of public health. This poses a very serious problem. In families with annual incomes at or below poverty, almost 70 percent of black children suffer from high lead blood levels, while only 36 percent, which is much too high, of the nonblack children. Blood poisoning is the most preventable disease that we can address. It is identifiable. We just need the protections to do it. We know what levels; our scientific levels and science has taught us that.

What we need now are standards that ensure that all of our citizens are protected. Women living less than 1 mile from a hazardous waste site have a 12 percent higher risk of having a child with a birth defect than other mothers. Three million homes or 74 percent of all private housing built before 1980 contains some lead paint.

Minority and low-income people are more likely to live in these older homes. The lead which is already present is released into the bloodstream, placing these people, particularly women, at risk for continuing lead poisoning many years later.

We are considering now the costs of health care. We cannot do that in a vacuum. We are conscious of all of the things that lead to a large price tag when we talk about the cost of health care. We cannot afford to ignore a very preventable illness that is so common among the poor.

We can stand here and say that we are upholding our oath without remembering that we have a large percentage of poor people and poor children in this country, and they live in the areas that many of us might not see, but that does not mean they do not exist.

The clean water bill now before us is vital. It is time to do right by our Nation's poor and minority communities. Too often, we throw garbage, place incinerators and dump dirty water in these communities.

This amendment is an important step in making a bad bill better. People have a right to know what is in their water, the water they drink. The poor and minority communities have the same right to clean water as the rest of us.

Mr. Chairman, our right to clean water is threatened.

In 1972, Democrats and Republicans came together to end pollution of our water. They recognized that no industry, no person—no matter how rich or how powerful—has the right to poison our streams, our lakes, or our people.

The Clean Water Act is a proud, bipartisan law that stands up for the common person. It says "no" to those who would poison our environment. We must not allow it to be weakened.

I plead, with all my colleagues to make this bad bill a little bit better. Support the Collins on bloc amendment.

Mr. Stokes. Mr. Chairman, I rise in support of the Collins amendments.

Mr. Chairman, although pollution affects all people, no matter where they live, direct exposure to water pollutants and other environmental hazards are disproportionately distributed. Data now indicate that low-income, racial and ethnic minorities are more likely to live in areas where they face environmental risk.

However, a stronger data base is needed to better understand the problems, to identify solutions to those problems and to evaluate the efficacy of programs that address the problems. This is why it is imperative that the Environmental Protection Agency collect and analyze data on sources of water pollution to which minorities and low-income populations are disproportionately exposed.

For example, there are clear situations where certain populations are exposed to higher levels of pollutants in waters. Thus it is essential that prior to the granting of discharge permits, the Environmental Protection Agency review the permit applications and related elements to ensure that minority and low-income communities will not be adversely impacted.

Recognizing that a number of factors might increase susceptibility to the effects of water pollutants, the environmental justice amendment calls for the development of water quality standards that take into account the variations in water usage among diverse segments of the population, including the high risk individuals such as pregnant women and children. These individuals may be more or less sensitive than others to the toxic effects of water pollutants.

Mr. Speaker, these and other provisions of the environmental justice amendment will help ensure that water improvement approaches are applied equitably across racial and socioeconomic groups, minority and low-income communities faced with a higher level of environmental risk.

Therefore, I urge my colleagues to support this amendment.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Michigan [Miss Collins].

The question was taken, and the Chairman announced that the noes appeared to have it.

The vote was taken by electronic device, and there were—ayes 153, noes 271, not voting 10, as follows:

[Roll No. 319]

AYES—153

Abercrombie  Gephardt  Owens
Ackerman  Gibbons  Pallone
Aderholt  Gonzalez  Pascrell, NJ
Bacal  Green  Pelosi
Barrett (WI)  Gutierrez  Pence
Bartola  Hall (OH)  Perdue
Belenski  Harman  Poshard
Bentsen  Hastings (FL)  Rahall
Bennett  Hayes (OH)  Range
Brown (CA)  Hefner  Reed
Broward (FL)  Hillard  Reynolds
Brown (OH)  Hinchey  Rivoli
Bryan (TX)  Hoyle  Roemer
Brown (CA)  Hoyer  Roosevelt
Diaz-Balart  Jackson (LA)  Ross
Clay  Johnson  Roybal-Allard
Clyburn  Kaptur  Rush
Coleman  Kennedy (MA)  Sanders
Collins (MI)  Kennedy (RI)  Sander
Costello  Klenger  Scott
Cotler  Lantos  Serbuk
Coyne  Levin  Skaggs
DeLauro  Lewis (CA)  Slaughter
DeFazio  Lincoln  Stark
DeLay  Lipinski  Stokes
DeLauer  Lofgren  Stupak
Deutsch  Lowey  Thompson
Diaz-Balart  Maloney  Thornton
Dingel  Manzullo  Torricelli
Dixon  Martinez  Tauzin
Dobernet  Markey  Taylor
Durbin  Mathias  Tayloe
Engel  Martinez-Villar  Traffinant
Eshoo  McKinney  Tucker
Evans  Meehan  Velazquez
Feenstra  Mengquist  Vento
Fattah  Menendez  Visclosky
Fazio  Miller (CA)  Volcker
Fazio (CA)  Mineta  Waters
Filner  Miller (CA)  Ward
Filner  Miura  Waters (CA)
Flake  Mink  Waxman
Fonseca  Moran  Williams
Ford  Nader  Wise
Frank (MA)  Neal  Woolsey
Frost  Nussle  Yates
Fuse  Obey  Yulish
Gegdenson  Ortiz

NOES—271

Allard  Barr  Bilirakis
Adler  Barrett (NE)  Bilkey
Armey  Bartlett  Blue
Bachus  Barton  Boehlert
Baker (CA)  Beatty  Boehner
Baker (LA)  Becerra  Bonilla
Baldacci  Beveridge  Browder
Balenger  Biggert  Brownback

May 11, 1995
Mr. ORTIZ changed his vote from "no" to "aye."

So the amendments were rejected.

The result of the vote was announced as above reported.

AMENDMENT OFFERED BY MR. MINETA

Mr. MINETA. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

[Amendment text]

Mr. MINETA. Mr. Chairman, this amendment would make this bill's provisions on risk assessment and cost-benefit analysis consistent with those in H.R. 1022, the Risk Assessment and Cost-Benefit Act of 1995 already passed by the House earlier this year.

This bill requires elaborate risk assessment and cost-benefit analysis to be performed before regulations to protect clean water can be issued.

The argument in favor of these requirements is that the House has already spoken on the issue of risk assessment and cost-benefit analysis, and we should be consistent with it in the Clean Water Act.

But the provisions in this bill are not consistent with H.R. 1022—they are more extreme and more onerous in three key respects.

First, regarding comparative risk analysis, H.R. 961 would have EPA and the Corps of Engineers compare the risks which are the subject of their rulemaking to not only risks that they know something about, such as the health effects of toxics in water or flooding due to filling of wetlands, but also risks about which they know nothing, such as auto accidents on highways or building collapse due to earthquakes. H.R. 1022 specifically rejected having major risk comparisons outside their areas of expertise, because of a valid concern that agencies wouldn't know what they were doing.

Second, this bill contains a look-back provision which would require risk assessment and cost-benefit analysis to be applied to existing, as well as proposed, regulations. This was the Barton amendment to H.R. 1022, but without safeguards to protect the risk assessment process. This issue was specifically rejected on the House floor during debate on H.R. 1022. The House rejected Mr. BARTON's look-back idea because of concerns that it would overwhelm not only the regulatory process but also the risk assessment procedures, and subject us to endless legal challenges. We should not adopt in this bill what the House has earlier specifically rejected for the risk assessment bill.

And third, this bill goes well beyond the standard established in H.R. 1022 that regulatory benefits would likely justify, and be reasonably related to, costs. Instead, it requires a clean water regulation to maximize net benefits. H.R. 1022 did not adopt that standard because our ability to quantify all costs and all benefits is not precise.

Requiring an agency to select one regulatory option with the highest net benefits, out of all possible options, assumes a level of measurement precision which does not exist in our agencies, nor can be achieved by cost-benefit analysis. H.R. 1022 did not adopt this standard for the simple reason that it was bound to fail.

Many have argued that on risk assessment and cost-benefit analysis we should be consistent with what the House did on H.R. 1022. That is exactly what my amendment does. I assume this amendment, therefore, will be non-controversial, and urge its adoption.

Mr. MICA. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, again I rise in opposition to another amendment by the distinguished gentleman from California which, unfortunately, would also gut some of the provisions we have worked so hard to establish in this legislation dealing with risk assessment and cost-benefit analysis. I would like to also share with my colleagues the fact that this amendment, just like the other amendment offered, again by the distinguished gentleman from California, was soundly rejected by our committee. This amendment has really a grab bag of provisions in it and changes, some of which have good news for some and some bad news for. Unfortunately, most of the news presented in this amendment is bad news.

Let me say, for instance, that the one good thing in this proposed amendment is that it would clarify that risk comparisons should include a discussion of differences between the nature of risks being compared. However, this is already addressed in section 324(b)(2)(C) on page 177, but it does not
really hurt to misstate as the champion of this particular amendment has offered.

Now, that is the good news. Now, my colleagues, let us look at the bad news, and there are a number of areas that fall into that category. Unfortunately, the majority of the changes proposed in the first amendment to this bill are all undesirable, and I want to highlight a couple of these.

First, the amendment would change the cost-benefit criterion for maximizing net benefits to a weaker standard. The benefits must be "reasonably related to" the costs of a regulatory action.

This is a standard that already exists under certain sections of the Clean Water Act, such as section 302(b)(2)(A), and would be less than vigorous at weeding out unnecessary and really inept rules.

Further, this standard, since it does not address cost effectiveness, conflicts with the regulatory review criteria adopted by the House in H.R. 1022 this year that passed earlier by a wide margin.

Second, the amendment would greatly restrict the risks that EPA could use for comparison purposes. Under the amendment, EPA could only compare risks if they have already been regulated by EPA and result from comparable activities and exposure pathways. This would greatly diminish the benefit of risk comparisons.

For instance, part of the value of performing these comparisons is to see whether there may be other unregulated risks that deserve more immediate attention. This would not be possible under the amendment proposed by my good colleague.

Finally, and unfortunately, this amendment would wipe out the modest retroactive provisions of this bill. Let me say, I would like to see much more retroactive attention to all of these regulatory matters, even in this legislation.

For instance, the retroactive coverage has been described and misquoted, and let me give you one example here, by the National Wildlife Federation, as being "23 years of existing major Clean Water Act standards by requiring extensive cost-benefit and risk assessment reviews for all major existing standards within an impossible deadline of 18 months."

This is simply untrue and misleading. In fact, H.R. 961, our legislation, requires EPA to review only those regulatory requirements and guidelines issued before February 15, 1995, that would result in costs of $100 million or more per year. Such reviews must be completed within 18 months of enactment of this section.

Thus far, only one requirement, the Great Lakes Initiative, issued in March 1995, would need to be reviewed under this subsection. Further, since rules costing $100 million or more already are required to be evaluated by EPA and the Office of Management and Budget under Executive Order 12866, the committee expects that the retroactive review required by sections 323 and 324 would place little or no additional burden on EPA, assuming EPA has complied with the Executive order. These are only those of the serious problems with the grab bag of changes proposed under this amendment, and any one of them is in fact enough for me to vote against this amendment.

Mr. Chairman, on the basis of just these three points, I urge my colleagues to vote against the amendment.

The CHAIRMAN. The time of the gentleman from Florida [Mr. Mica] has expired.

(On request of Mr. Volker, and by unanimous consent, Mr. Mica was allowed to proceed for 2 additional minutes.)

Mr. MICA. Mr. Chairman, let me say I appreciate the extension of time, and also the opportunity to talk about risk assessment, because this is probably the last frontal attack on risk assessment before the House of Representatives.

As my colleagues know, this issue came before the House in the last Congress and we were denied an opportunity to bring this forth in the form of a complete piece of legislation. It was never voted on as far as affecting all regulatory items before the Congress.

Now we have the first individual bill, a regulatory bill, a regulatory reform bill, and we have an opportunity to pass good cost-benefit risk assessment language. This is in fact going to be the last assault, I believe, on risk assessment.

So many of the colleagues who have come here on many occasions to vote for risk assessment will have that opportunity today. Many of the people who have come here and asked for cost-benefit analysis in the way we pass regulations in this Congress and through the agencies, the Federal Government, will have an opportunity to vote today. And for all we can bring common sense to a process, a regulatory process, that has been out of control, out of hand, put people out of work, out of business, out of jobs.

So I urge my colleagues to come to the floor this afternoon, defeat this final amendment that proposes a frontal assault on good risk assessment language and also on cost-benefit language that is so essential to have in this clean water bill. This is what this is all about, bringing common sense, bringing some light into an area of darkness in the regulatory processes of this country.

I thank the gentleman for the additional time.

Mr. DOGGETT. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I rise in strong support of the Mineta amendment. I have to tell the House that the Democratic members of the House Committee on the Budget were put to a very difficult choice yesterday: Should we stay across the street in the Cannon Building and fight the surprise attack disclosed in its details for the first time yesterday morning by the Republican members of the Committee on the Budget to wreck havoc with Medicare, to break their promises with reference to Medicare, and to affect senior citizens across this country in their pocket and insisting they come up with more money to fund their health care, the same group that wants to challenge the middle class families of this country who want to send a college to their college, to cover that by adding $5,000 to the cost of a Stafford loan, do we stay over there and fight that kind of surprise attack concocted in the shadows of this Capitol by secret Republican task forces, or do we come across the street and help the gentleman from California here on the floor of the Congress stave off the polluters who want to wreck one of the most effective pieces of environmental protection legislation that this country has ever known.

Well, it was a tough choice. But staying there from 10 in the morning until after 1 o'clock this morning did not stop a mean-spirited budget resolution from passing. But I hope it has helped inform the American people about what lies ahead, because with Mother's Day coming up, if there is any American citizen that has not yet bought a present for Mom, they better send her some money if she is on Social Security, because these Republicans are coming after Social Security and coming after Medicare.

Now, what about this issue of water? Not having had a chance to fight the battle yesterday, I do not quite understand why some of our Republican colleagues are so insensitive to the idea of clean water. Maybe it is because they drink Perrier all the time. I do not know what it is. But for whatever the reason, in my part of the country, Colorado on the rocks is still not a bad drink. You take Colorado River water, you turn it into ice, and for some good ice, and on a hot summer day in Texas it tastes might good. This battle is about protecting Colorado on the rocks, protecting the drinking water in the Colorado River, in the critical tributary of that river called Barton Creek, with a natural spring called Barton Springs, which is a source of entertainment and, I might say, a little coolness on a hot summer day in Texas.

Citizens all over central Texas are struggling to protect that natural resource. They recognize we have something very unique in the beauty and the quality of the water of the Colorado River and of Barton Springs, a place to swim, to fish, and, most importantly, a source of pure water. And what is occurring today affects Austin, TX, very much, because we value our water. We have developed a balance between the necessary part of our economy, the need to expand and
develop and have jobs, and the recognition that does not have to be in conflict with clean water and the environment. Rather, the two can interface and work together.

Our children will benefit because we would not let those two very legitimate concerns get in conflict. What is occurring here today is an effort to thwart the attempt of the people of central Texas to protect their water supply.

Mr. Chairman, the bottom line is that this so-called Clean Water Act is really a dirty water act. And of the many horrid provisions of this bill, and goodness knows there are a lot of them, the one that the distinguished gentleman from California is now trying to fix concerning the standards for risk assessment is one of the worst.

What this measure does is to take an amendment that was rejected by the House Committee on Science, chaired by the gentleman from Pennsylvania [Mr. Walker], and rejected here on the floor of the House. Let me tell you, an amendment that is so bad that it gets rejected by that committee is so bad you cannot scrub it down with a brush.

Let me assure you that this committee on risk assessment—and let me remind you how it handled the risk assessment bill. This is a committee where when you ask the committee counsel about the risk assessment bill, he cannot give you an answer without turning over his shoulder and getting the answer from the lobbyists that helped draft the bill. That risk assessment bill is the one this House passed. It will be in this piece of legislation even if the amendment of the gentleman from California [Mr. Mineta] is adopted today. The question is, do we go even further than that?

Well, the amendment that is already in the bill has received bipartisan opinion. It was Senator Chafee, the Republican Member of the Senate, who indicated that this is not about good science, it is about gumming up the regulatory process. To use his words, it is a recipe for gridlock. And that is all that people want who oppose this amendment.

The CHAIRMAN. The time of the gentleman from Texas [Mr. Doggett] has expired.

(On request of Mr. Volkmer, and by unanimous consent, Mr. Doggett was allowed to proceed for 2 additional minutes.)

Mr. DOGGETT. Mr. Chairman, risk assessment is a good concept if, and only if, risk assessment means good science. If risk assessment is only good politics, if risk assessment is only gumming up the regulatory process so that you cannot regulate and assure clean water, then it is a pretty worthless concept.

We get a good dose of that in this bill, because it was not 30 minutes ago that the distinguished gentleman from California said, well, let us have it both ways. If they are going to come along and weaken the process, if they are going to come along and have waivers so that polluters can pollute a little here on the side and a little there and a little here, then let us apply risk assessment to that. Was that amendment accepted? Absolutely not, because this is a one way street for polluters.

It is OK to pollute; do not get in the way of anyone trying to regulate the polluter. But if it is someone who wants to do something about regulating pollution, then let us erect as many barriers as possible.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, is it not true that H.R. 1022 applies to all regulations that may be forthcoming under this legislation? The old risk assessment regulatory reform bill that we passed, the House passed back during the 100th Congress.

Mr. DOGGETT. It does that. This is a question of whether you go even further than that bad old amendment that we passed back then.

Mr. VOLKMER. Let us say that that bill goes on. The bill eventually becomes law and then we have this bill go on with these provisions that the gentleman from Florida thinks so much about and this House does not think so much, if you follow the regulatory reform process when we voted on these things, but, anyway, this passes. Now we have got two different EPA, Corps of Engineers for everybody else to follow; is that correct?

Mr. DOGGETT. That is absolutely right.

Mr. VOLKMER. It is absolutely crazy. I do not generally disagree with the thrust of much of this legislation. As far as the agriculture sections of it, I love it. But when it comes to things like the kinds of things that make me question whether I want to vote for this bill.

Mr. GANSKE. Mr. Chairman, I move to strike the last word.

With respect to the Mineta amendment, I would argue against this and in favor of the bill. President Clinton and Mrs. Browner and many in the press have stated over and over again that big business is responsible for the risk assessment and cost-benefit analysis. This legislation has the support of over 1,000 industry trade associations, the NFIB, and the National Farm Bureau, but the truth is that the risk and cost-benefit agenda is long overdue and represents principles with broad-ranging support by not being State and local governments.

The claim that this just an agenda of big business is nonsense. President Clinton and Mrs. Browner and the press know it. The National Governors Association states:

Environmental requirements should be based upon science and risk-reduction principles, including the appropriate use of cost-benefit analysis that considers both quantifiable and qualitative measures. Such analyses will ensure that funds expended on environmental protection and conservation address the greatest risks first and provide the greatest possible return on investment.

The National Association of Counties in hearings before the Committee on Commerce stated:

Although draft legislation which requires federal agencies to provide fair, scientifically sound and consistent assessments of purported health, safety or environmental risks prior to the imposition of new regulations is just plain good sense, without at least an attempt to make a scientifically based assessment of the risk that is sought to be abated, its relationship to other risks, and the costs involved, it is a recipe for gridlock.

The American public, by a margin of three to one, supports cost-benefit analysis. This amendment would significantly weaken that. That is why I would urge Members to vote against this amendment and in support of the bill.

Mr. MICA. Mr. Chairman, will the gentleman yield?

Mr. GANSKE. I yield to the gentleman from Florida.

Mr. MICA. Mr. Chairman, I just wanted to make a couple of responses in response to some comments that were made by a previous speaker who came to the floor and said that he was only given the opportunity to be at budget hearings or to run to the floor and talk about this clean water legislation. Indeed, those are some of the choices that we have to face.

We have to face the fact that literally for the last 40 years that we have, that this Congress has robbed every cookie jar in the country and that the cookie jars are all empty and we have busted the budget, and the country is in serious shape, financial shape, and facing a disaster. Those are the choices before us.

The choice is not a question of just balancing the budget or going on in the means that we have done in the past. The choice is that we have to address these serious financial problems and that the cookie jar has been raided for the last time, and we have to make those choices.

The choice on the floor today that we run back and forth on relates to regulation and the regulatory process. We have so overregulated. We have had the experience of this law on the books and we know what it is doing. We know how it is driving people out of business, out of jobs, out of the open world competitive market.

We know, in fact, that he talked about bottled water and Perrier. Well, there are probably no Federal regulations except for possibly some fancy labeling regulations. That is a situation we find ourselves in, we are swatting at the flies and missing the elephants. So we have to make those choices and we have to decide.

We have to bring into the regulatory process cost-benefit analysis and risk assessment, which is only a commonsense approach. This is not anything
that is intended to destroy the environment and have a lesser environment, have less pure water or air. It is to bring some reasonableness, some common sense to the process.

So whether it is the physical condition of the United States or the regulatory conditions imposed by this Congress in years and years of overregulation, those are the questions before us. Now we have a chance with this amendment to defeat the progress we want to make in regulatory reform. I urge my colleagues to defeat the Mi- neta amendment. Let us go forward. Let us bring common sense to the process. Let us make this Congress work for the people and for business and for jobs and for competition rather than against folks and make some commonsense improvements in the process.

I thank the gentleman for yielding to me.

Mr. BORSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I support the amendment offered by the gentleman from California [Mr. MINETA].

Very simply, the House spent a week debating the issues of risk assessment and cost-benefit determinations. I did not agree with all of the outcomes but the House has made a determination.

Unfortunately, many of the provisions of this bill go far beyond the House-passed provisions. In one case, this bill contains a look back provision that was specifically rejected on the House floor by a vote of 206 to 220. The bill also contains language on maximum net benefits that goes well beyond the cost-benefit language approved by the House by a vote of 415 to 15.

Mr. Chairman, we should not go beyond what the House has already done. I urge support for the amendment.

Mr. MINETA of California, Mr. Chairman, I move to strike the requisite number of words in support of the amendment.

Mr. Chairman, I rise in support of the amendment. I do so because the gentleman from Florida gave a very compelling speech here. It just did not happen to be accurate. Because the reason we have the Clean Water Act, the reason we have the Clean Water Act was not because of 40 years of overregulation. It was because of 100 years of people abusing the waters of this Na- tion, abusing the airways of this Na- tion, abusing the natural resources and lands of this Nation that the taxpayers unfortunately now have had to come back and clean up much of that mess.

Without the Clean Water Act, without the Clean Air Act, there was no industry that walked into the Congress and said, I am going to voluntarily clean the air in the San Francisco Bay area or in Los Angeles or in Cincin- nati or in Philadelphia. There was no industry that walked in here and said, I will voluntarily take our sew-
I think that for the sake of consistency, most Members of the House would argue no.

We are going to hear further that this exemption is warranted for national security purposes, because most of these facilities, these are nuclear Navy facilities, are essential to the defense of the United States. There is another smaller amendment that section allows the President of the United States, by simple Executive order, to exempt any Federal facility or operation from all the requirements of this bill, but that would require a separate action.

I would argue that that would be the more consistent way to deal with these facilities. If some of them truly need an exemption from the Clean Water Act, do I know what they are doing or what they are putting in the water that they need exemptions. But if they need exemptions so that they can put things in the water that industries and local governments are not allowed to put in the water, then they should ask the Commander in Chief for individual exemptions so there is at least some level of accountability and scrutiny applied.

There are 10 States directly affected by this amendment, and a total of 12 States who consider downstream entities. Again, the question is what is it that is objected to by the Federal Government? What can the Federal Government not do? What is they are putting in the water? What is the Federal Government not do? What are they putting in the water?

I think the people who live in or represent those 12 States should ask that question. I think their constituents are going to ask them that question in the future. What are they putting in the water that will not allow industry to put in the water, that we will not allow local governments to put in the water? What is the Federal Government putting in the water it needs an exemption from the Clean Water Act, I do not know what they are doing or what they need an exemption from all the requirements of this bill, but that would require a separate action.

I yield to the gentlewoman from Colorado.

Mr. SCHROEDER. Mr. Chairman, am I hearing what the gentleman said correctly, that all of the Navy nuclear facilities have been taken out and you did not know about this? Did I hear what he said?

Mr. DEFAZIO. Mr. Chairman, that is correct. The committee saw fit to include them under the bill and then they, the people, removed them from the jurisdiction of this bill.

Mrs. SCHROEDER. If the gentleman would yield again, I have always really respected him. He is one of the few who really reads the bill. I assume he did not get any notice, he just found this out?

Mr. DEFAZIO. Mr. Chairman, I am afraid that neither the staff nor I caught this before the technical amendments had gone through the Committee on Rules.

Mrs. SCHROEDER. If the gentleman will continue to yield, how many facilities are there like this? I really find it amazing that the Federal Government does not want to be under the same law as everyone else.

Mr. DEFAZIO. This would exempt 12 Federal facilities, Mr. Chairman, from the laws that every other local government, State government and industry would be subjected to. Furthermore, we will hear, I am certain, and the gentleman familiar with this from his work on the committee, the claim that they need an exemption for national security purposes.

The bill allows the President with the stroke of a pen to exempt anything, any Federal facility, if that is necessary. Beyond necessary, they are closed and one is being decommissioned. Why would we remove a closed or a decommissioned facility from jurisdiction under the Clean Water Act for national security purposes?

Mrs. SCHROEDER. Mr. Chairman, I thought I heard what he said and I appreciate very much the gentleman clarifying that. That is really shocking. I hope people support the gentleman’s amendment.

Mr. DEFAZIO. I thank the gentleman.

Again, just back to the basic point here. If indeed there is a threat to national security, particularly at those closed bases or the base that is being decommissioned—

The CHAIRMAN. The time of the gentleman from Oregon [Mr. DEFAZIO] has expired. (On request of Mrs. SCHROEDER, and by unanimous consent, Mr. DEFAZIO was allowed to proceed for 2 additional minutes.)

Mr. DEFAZIO. Mr. Chairman, again the question is, Why should we grant a blanket exemption under this bill when the President has the authority as Commander in Chief to exempt any individual military facility? In particular, is it in the States of California, Idaho, and South Carolina that we would exempt facilities that are closed or being decommissioned? It is particularly puzzling.

Even beyond that, I think the residents of the other States and the list is long, New York, Pennsylvania, South Carolina, Virginia, Idaho, Washington, Hawaii, Connecticut, I think the residents of those States should ask, what is it that the Federal Government is putting in the water that is being decommissioned? Is it something that happens to flow through their community; what is it that the Feds are putting in that they need this blanket exemption? I think that is a question that should be answered.

All I am saying is, put back in the words, subject the Federal Government to the same requirements as everyone else in this country, the same way we subjected the Congress of the United

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States to the same laws as everyone else in this country, for the sake of consistency make the Federal Government follow its own laws, and if it needs an exemption for national security purposes, the bill allows it with a simple signature by the President of the United States.

Mr. SHUSTER. Mr. Chairman, I rise in opposition to this amendment.

Mr. Chairman, this amendment creates a new and duplicative regulatory authority for the EPA.

The Naval Nuclear Propulsion Program currently exercises regulatory authority over the activities affected by this amendment. This is a system that has worked well and has been found by the GAO to contain "no significant deficiencies." The system is already regulated and has no need for additional or duplicative regulations by the EPA.

Contrary to our efforts to reinvent government, do more with less, and reduce unnecessary regulation, the gentleman's amendment would do just the opposite.

I am particularly concerned with the costs this would impose on the Navy. As with most other branches of the Government, the Navy is facing significant cuts. Adding another layer of unnecessary regulation will have the effect of imposing additional tax on the Navy and require the Navy to devote scarce resources from defense programs and missions and instead use them for yet another layer of unnecessary and duplicative regulations.

I urge my colleagues to vote against this amendment and protect scarce naval resources.

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. FOWLER. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. I thank the gentleman for yielding.

I would make the point that this simply returns us to current law. In fact, in the clean water bill of last year, this provision was included. We are simply doing what was in last year's clean water bill.

Perhaps most importantly, I was the author of the provision to change it, and I was wrong. After I studied the issue, I came to the conclusion that the points that the gentleman makes are very valid points. We do not need a duplicative process. This is already regulated by the Nuclear Regulatory Commission. It works. "If it ain't broke, don't fix it."

Ms. FURSE. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I am really pleased that my colleague, the gentleman from Oregon [Mr. DeFazio], has brought this to the floor. I am just shocked that my constituents are not going to be told that there are nuclear materials being put into the rivers, into the waters, if that polluter is a Federal facility.

We do not allow anyone else in this country to self-regulate. It does not seem fair that private businesses are held to stricter rules, to stricter costs, much greater costs than government facilities. If private businesses are not allowed to self-regulate, why should the Federal Government be?

I represent the First Congressional District of Oregon. That is on the Columbia River. The Idaho National Engineering Lab is upstream from me. That means that my constituents of the First Congressional District of Oregon may be having nuclear materials put into the river and they are not going to be told about it. I just think that is plain wrong.

Mr. Chairman, we are sent here to speak for our constituents, to defend their health. I would like to urge my colleagues who represent districts that are downstream from these Federal facilities to make sure that we do not allow our constituents' health to be damaged.

I am going to vote yes to protect the health of my citizens on the DeFazio amendment. I will be happy to be told every other member who represents districts that are downstream from these Federal facilities to do the same.

Mr. DEFAZIO. Mr. Chairman, will the gentlewoman yield?

Ms. FURSE. I yield to the gentleman from Oregon.

Mr. DEFAZIO. Mr. Chairman, just to respond to the previous speech, I was a bit puzzled to hear that the nuclear Navy is subject to the EPA and NRC. If that were true, then there would be and there never would have been any need to include them in this bill.

They are exempt from the Clean Water Act, they are exempt from the authority of the Environmental Protection Agency, and they self-regulate. Unlike any other polluter in America, the nuclear Navy tells us they have adopted standards, they are meeting their standards and we should not worry about it.

Well, if that is good enough for the nuclear Navy, perhaps we should look at that approach for private interests or municipal interests. I resent the fact that my municipal government has to be monitored by the EPA for its sewer system. It costs money.

But at some point, we do not allow self-regulation. I realize that of course the Navy is certainly holding itself to higher standards and certainly meeting its own conditions, and if that is true, then it will cost them nothing to comply.

Ms. FURSE. I say to the gentleman from Oregon [Mr. DeFazio], the point you make I think is really important. The city of Portland has invested $750 million in cleaning up all pollution site and they are happy to live by the rules of the EPA.

I am just shocked to find the nuclear Navy, this Federal facility, is not held to the same standards. I think it is really great that the gentleman brought it to our attention. I certainly support the amendment and hope my colleagues will do so, too.

Mr. SOLOMON. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendment.

Mr. Chairman, I do have much more than 5 minutes because we have to get a budget resolution out here on the floor for next week.

Somebody posed a question a few minutes ago, what is the nuclear Navy doing in the pot. Are they doing something wrong? Well, they put in nuclear submarines, for one thing, torpedoes. They even put this marine in the water once.

This amendment would strike much of what was accomplished yesterday in the chairman's en bloc amendment. Let me emphasize, Mr. Chairman, and I think members ought to listen to this on both sides of the aisle. The Department of the Navy, the Department of Defense, and the Joint Chiefs under President Clinton all strongly oppose this DeFazio amendment. Keep that in mind.
We all know my colleague and friend from Oregon opposes all things nuclear, but this amendment does not make sense. It is an attempt to fix something that is not only not broken, but is actually working very, very well.

In fact, I would again quote President Clinton, who just recently described the propulsion plants as "exemplifying the level of excellence we are working toward throughout our government."

Mr. Chairman, no environmental problem exists with this program. I think we can safely assume this amendment is little more than a backdoor attempt to once again undermine an essential national security program in this country. And again I would request that Members support the position taken by the Navy and our Joint Chiefs of Staff and President Clinton and myself and vote "no" on this DeFazio amendment.

Mr. BATEMAN. Mr. Chairman, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Virginia, one of the most distinguished members of the National Security Committee.

Mr. BATEMAN. Mr. Chairman, I thank the gentleman for yielding. I want to make the comment just made by my colleague from New York, the distinguished chairman of the Rules Committee. I would only offer in addition to that if you take the record of the Navy's nuclear propulsion system, the standards of safety and their performance, the military discipline and integrity that has underlain their program for all of these years, and you wanted to make an amendment to make EPA and others subject to them and give them the money to discharge it, it might make sense, but which certainly do not add any additional cost to the taxpayers for duplicating, replicating that which is already being done in a very distinguished way.

The idea that people are putting things in their water and you do not know about it I think is basically pretty darn frivolous.

Mr. SOLOMON. Let me thank the gentleman for his comments.

Let me remind my colleagues of what is at stake here. We have been told there is going to be drastic cuts in the programs in the Navy. This is shore-based fixed facilities in the United States of America which have the potential to harm American citizens. That is what we are trying to regulate here, and in fact the situation would be created if this amendment is not adopted, in Idaho we would have two different Federal agencies regulating two different standards at Idaho nuclear propulsion laboratories, because part of the property is nuclear Navy, which will be exempt from all Federal laws, and part of the property is DOE and will be subject to Federal laws. The situation we are going to create is bizarre, and to say it is a burden or it is going to create a national security risk when we are dealing with two bases that have already been closed, two that are closed and one that is being decommissioned, that is an absurdity to say somehow by subjecting two closed bases, which perhaps, you know, pose a daily threat to nearby citizens from the Clean Water Act is a threat to our national security. The gentleman is on the committee of jurisdiction.

Mrs. SCHROEDER. I do not really understand it, because one of the things I found when we were going through this base-closure process was many of these citizens are very upset. They are afraid, and I would like to declare these areas sacrifice zones and not clean them up, and I certainly hope that is not what we are doing in this bill, because if you are saying closed bases do not have to comply, and we are going to let those money, well, if people who happen to live around it want it to be cleaned up, I guess what we are saying is they have to do it with their own money at the local level and the Federal Government is not going to help. I really think this is surprising, and I am particularly startled that the gentleman was not notified then that the bill was changed before it came to the House floor.

I think the gentleman's point too that he is making is he is talking about the shore installations. He is not talking about tracking ships and doing all of that, you are talking about the shore installations that should be good neighbors, and if there is some reason that cannot be that is not satisfactory, the gentleman is assuring me there is something in the bill that would allow the President to deal with that, am I correct?

Mr. DEFAZIO. Mr. Chairman. That is correct. On page 86 beginning with line 17, "The President may exempt any effluent source of any department, agency or instrumentality,..." et cetera, and goes on to explain there is no limitation on that authority.

Mrs. SCHROEDER. I really thank the gentleman from Oregon again for his vigilance.

Mr. CUNNINGHAM. Mr. Chairman I move to strike the requisite number of words.

Mr. SOLOMON. Mr. Chairman will the gentleman yield?

Mr. SANDERS. Mr. Chairman... Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. CUNNINGHAM. No, I will not. Sit down, you socialist.

Mr. SANDERS. Mr. Chairman... Mr. CUNNINGHAM. The ludicrousness of this, even to appeal this. It is the lunacy of this, the EPA and other organizations have continually stated you take the shore-based and the surface-based, have less problems than any of your public bases, less than all of them put together.

I have operated off these carriers. I have operated out of these. You want to take a Geiger counter, go ahead. I have scuba dived underneath the docks. I am not going to do that if it is polluting. And the same people that would control with big Government the rules and the regulations and try and diminish that national security, look at them, just look at them right here. And the same people. The team never changes, and you want to put these burdens, and the problems is that you fail to see the solutions to very simple problems. You state your own opinion as fact when it is not.
There are studies and studies and studies that show that there is no dis-
charge, that it is not regulated, but yet you would cost the American taxpayers
and lay on rules and regulations and have bigger Government, more facili-
ties, more control over the regulatory factors, and that is wrong.

Mr. ROBERTS. Mr. SANDERS, do we have to call the gentleman “the gen-
tleman” if he is not one?

Mr. SANDERS. Mr. Chairman, I move to strike the requisite number of
words.

Mr. Chairman, I rise to speak in sup-
port of the amendment. I thank the chairman very much and would like
the opportunity, if the gentleman from California would respond, just to ask
him a brief question, if I might.

My ears may have been playing a trick on me, but I thought I heard the
gentleman was referring to?

Mr. SANDERS. Mr. Chairman, I yield to the gen-
tleman from California.

Mr. CUNNINGHAM. Absolutely, putting homosexuals in the military.

Mr. SANDERS. You said something about homosexuals in the military. Was the
gentleman referring to the thousands
and thousands of gay people who have
put their lives on the line in countless wars defending this country? Was that
the idea of people that the gent-
leman was referring to?

Mr. CUNNINGHAM. I am talking about the military. People in the mili-
tary do not support this.

Mr. SANDERS. That is not what we
were talking about. You used the word
homos in the military. You have in-
cluded thousands of men and women
who have put their lives on the line. I
think they are owed—

Reclaiming my time, Mr. Chairman, I
would want to say that if my friend in sup-
port of this amendment, if my friend from Oregon was involved in the nu-
clear freeze movement, I want to con-
gratulate him. There are millions of
Americans who wonder about the wis-
dom of spending millions and millions
more dollars building more and more nuclear weapons at the same time as
the Republicans are cutting back on
Medicare, Medicaid, and student loans.

Furthermore, I find incomprehen-
sible that at a time when the vast ma-
Jority of the people in this country are
terribly concerned about what is going on
in the environment, terribly con-
cerned about the environmental impli-
cations of nuclear energy, that the
American people do not know what is
in their waterways, and that various military installations might be ex-
empted from Federal regulatory prac-
tices.

So I very much applaud this amend-
ment.

The CHAIRMAN. The question is on the amend-
ment offered by the gen-
tleman from Oregon [Mr. DEFAZIO].

The question was taken; and the Chairman announced that the noes ap-
peared to have it.

RECORDED VOTE

Mr. DeFazio. Mr. Chairman, I demand a recorded
vote.

A recorded vote was ordered.

The vote was taken by electronic de-
tice, and there were—ayes 126, noes 294,
not voting 14, as follows: [Roll No 221]

NOES—294

AEX—126

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The Clerk announced the following pairs:

On the vote:

Mrs. Collins of Illinois for with Mr. Bono against.

Mr. Moakley, for with Ms. Dunn against.

Miss Collins of Michigan for with, Mr. Friso against.

Messrs. Berman, Moran, and J. Eff-
erson, and Mrs. Clayton changed their vote from “aye” to “no.”

Ms. Lincoln changed her vote from “no” to “aye.”

So the amendment was rejected

The result of the vote was announced as
above recorded.

Mr. Frank of Massachusetts. Mr. Chair-
man, I move to strike the last word.

Mr. Chairman, I was not on the floor during the last debate, but I was in-
forned of some of the remarks that
want to address. I am here, Mr. Chair-
man, referring to the comment of the
Mr. FRANK of Massachusetts. I yield to the gentleman from Oregon.

Mr. DeFAZIO. Mr. Chairman, will the gentleman yield?

Mr. DeFAZIO. Mr. Chairman, as I understood the statement which was directed at me, it was not to say that I wanted to put them in the military. Well, I have given the gentlemen from California. There are quite a number of gays and lesbians serving proudly in the U.S. military, unfortunately not serving proudly and openly because of the fact that people like him exist and have their peers know, the President and others to deny that opportunity to those people.

Mr. FRANK of Massachusetts. Let me say to the gentleman I do not want to get diverted. I am not here debating the substance of the policy: we have done that, and we will do it again. I am particularly calling attention to the formulation, the gratuitously, I believe, bigoted and insulating formulation, and I am very disappointed to see that I language on the floor of the House.

Mr. CUNNINGHAM. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from California.

Mr. CUNNINGHAM. Mr. Chairman, I think the gentleman is correct if that is the only issue. I meant it. I said it as a policy of the people in general that support the issues that degrade national security of this country, and that is one of those many issues which the gentleman supports, and in a case of amendment that is absolutely ridiculous, it was meant to formulate those same people that do not support defense are trying to tie the hands of defense even in the future.

Mr. FRANK of Massachusetts. The defense of a bigoted remark, and it was one of several remarks, makes even less sense than I had expected. I am talking about the formulation. It was bigoted, and I would hope it would not be repeated.

Mr. CUNNINGHAM. Mr. Chairman, I move to strike the last word.

First of all, it is not a bigoted statement. Many times the gentleman from California [Mr. DELLUMS] has told me that people have differences of opinion. It is this Member’s opinion that homosexuals in the military do not do service to the national security of this country, and in that vein making a statement that those that support that are supporting the nonreadiness of defense is—and I will be happy to yield in just a second.

The second thing is that there is a tendency by the Members that support that kind of activity, support all the rest of it, and it is meant that we need to support national security in this country.

I say to my colleagues, “A bigoted statement, if I was directing it to you or anybody else in this thing, in other contexts, yes, would be bigoted, but a personal opinion, that it degrades the national readiness of this country, is not a bigoted statement.”

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I was referring in part to the formulation of homos in the military. The gentleman has been very careful since that time to say homosexuals, but he was not very careful when he got up on the floor, and I took specific offense to the deliberately bigoted and belittling form of words that he chose to use.

Mr. CUNNINGHAM. Reclaiming my time, Mr. Chairman, let me say that I used the shorthand term, and it should have been homosexuals instead of homos. We do misspeak sometimes.

Ms. JACKSON-LEE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the previous speaker, the gentleman from California, attempted to make a correction in the utilization of the word homo or homosexuals. I just want to reemphasize the point that I think my colleagues are making on this side of the aisle. It is the point that we were discussing an environmental issue, and it is the point that for some reason it was thought appropriate to intrude a discussion on another nonmeritorious issue that gave some suggestion that the gentleman was throwing stones, if my colleagues will, at a person for having supported a group of people on another issue on another point. That to me seems to suggest bigotry, and maybe the gentleman did not mean that, and we would accept, certainly, his clarification and even an apology, but it is certainly my understanding that, if my colleagues were discussing one issue, and someone throws another issue in and castigates a group of people, then he has clearly made it an issue of discrimination and bigotry. Inappropriate behavior and words, and this certainly calls for an apology to both the colleague that was speaking and, as well, the whole group that he has maligned.

AMENDMENT OFFERED BY MR. NADLER

Mr. NADLER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. NADLER: Page 50, strike line 19 and all that follows through line 10 on page 52.

Mr. NADLER. Mr. Chairman, I rise today so that we will not have to see signs like the one to my left in the future. It is the right of citizens of this country to have clean water. If this bill is passed in its current form, the signs like the one to my left in the future will carry waterways that had already
been cleaned up if the cost of maintaining those controls outweighed the benefit of use the level of water quality in the opinion of the State. I would like to commend the gentleman from Pennsylvania [Mr. SHUSTER] for taking this section of the bill out of the bill in his en bloc amendments we adopted yesterday. While I am pleased this was done, I believe we must go further.

The bill still permits States to abandon all efforts to attain the previously set water quality goals, or even any water quality at all, if the State determines that in its opinion the cost of reaching the designated water quality standard outweighs the benefit.

My amendment would delete this section of the bill and maintain the current process in which the designated use, the designated quality, fishable, swimmable, navigable, can be reviewed by the State every 3 years.

I ask my colleagues to support this amendment for the following reasons:

First, this bill waives Clean Water Act quality standards if the cost outweighs the benefit of keeping the water clean.

The bill does not define how to measure the cost versus the benefit of parents being able to take their children fishing, or of children using their favorite watering hole, or a fisherman making their livelihoods, and how do you determine that the cost of not achieving that level of water quality?

The bill does not define what constitutes a benefit that would outweigh the cost, and vice versa. The bill does not define how to measure the cost versus the benefit and what standards to apply to measure which exceeds the other.

Second, proponents of this bill never referred to any problems with the current guidelines for determining how clean a waterway must be for standards must be attained, nor does this bill try to modify existing guidelines. They do not identify why we should change it.

Instead, the bill reflects the notion that if a State believes it is too expensive to reach the water quality levels set pursuant to the standards that it already determined, and that it can change every 3 years, then you can just stop, or not try quite as hard to clean up the water.

The bill essentially says in this section that we do not really care about the health and well-being of the people using this water. If it is expensive for a polluter to clean up the water, do not bother. In other words, the cost to the polluter is more important than the health of our children under this text.

Third, the current law gives the States ample flexibility to adjust the designated uses of a waterway and the level of water quality they must attain. Current law reflects that every 3 years this must be reviewed in the practicality of keeping the designation of each waterway, whether it be fishable, swimmable, navigable, must be reviewed every 3 years. They must take into account health, safety, agricultural, industrial, and recreational uses of the waterway. The States can then, after EPA approval, increase the amount of pollution that is allowed into those waters.

Some of my colleagues argue we should not permit the States to make their determinations without EPA approval and allow them greater flexibility. But this is not just a matter of trusting the States. It has to do with preventing polluters, big businesses, from in essence blackmailing the States by saying if you do not lower the water quality standards, we will move to the other States and we will take your taxes and our jobs with us.

The only way to protect the States against this form of blackmail by big polluters is to have the EPA still have a role to set minimal standards, so that the State can say well, while you may be able to move because you do not want to attain the quality standards here, but you will not be able to do the same kind of pollution in the next State either.

It also has to do with preventing interstate pollution. If one State lowers its water quality standards in their section of a river, that pollution then flows down the river to other States. Which means the other States need the water for fishing or recreational, agricultural, fishing or drinking purposes. As I mentioned earlier, the States already have the ability to lower water quality standards if they need to do so. But by including this cost-benefit analysis without any guidelines, it gives too much leverage to large polluters.

Finally it says that the State may eliminate the water quality standard if the State determines that the costs of achieving the designated use are not justified by the benefits. It can go to no standard at all.

In conclusion, Mr. Chairman, we must adopt this amendment and get rid of this language if we are going to attain a safe and healthy environment for people to fish, swim, and drink the water.

Mr. MICA. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I am afraid that the gentleman from New York has presented an amendment in search of a problem. States actually have asked for this flexibility, and States currently set these standards now. What we are looking at proposing in our legislation is to allow a reasonable change and a reasonable opportunity to make changes under reasonable circumstances.

The amendment of the gentleman from New York [Mr. NADLER] strikes the provisions of H.R. 961 that allow States to locate costs and benefits into account in reviving designated uses of water bodies.

Let me point out that in 1975, the administrator required States to designate all navigable waters for which a use had not been designated as follows:

- They are either fishable, swimmable, and that is to use the quote, the designation by the administrator. They are designated as fishable-swimmable.

As a result, many of the waters have received a designated fishable-swimmable category and an unrealistic designated use. For example, streams in the arid West that are dry most of the year have been designated as fishable and swimmable.

The bill that we have proposed changes current regulations, the revision of designated uses, in two ways. Let me explain those two ways. First, current regulations allow a State to revise designated uses if it demonstrates to EPA that achieving the designated use is infeasible. The bill allows the State to make the determination of feasibility, but feasibility is still defined by EPA.

Second, and let us look at the second point, under current law designated uses may be revised only if attaining the use will result in substantial economic dislocations.

Certainly the author of this amendment is very familiar with economic dislocations. I had the opportunity to visit his district yesterday, and I saw the skyline of his district and the vacant factories, and I think he told how many hundreds of thousands of manufacturing jobs have been gone, how the piers are abandoned and the housing tenements are abandoned. So we know about this question of substantial economic dislocation. I am sure the gentleman is familiar with that.

Let me say that H.R. 961 allows States to revise a designated use that is not being attained if the cost of attainment is outweighed by the benefits. So what we are trying to do is something reasonable. This is a reasonable approach, and this is an approach that we think makes a lot of sense. So we are using costs and benefits here in a manner that will give flexibility to the States, and the States have requested this flexibility.

Mr. NADLER. Mr. Chairman, will the gentleman yield?

Mr. MICA. I yield to the gentleman from New York.

Mr. NADLER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, the gentleman from Florida is quite correct when he says that we are granting this flexibility to the States. The key difference, of course, is that under current law the administrator of EPA has to agree with the State that is changing the designated use that it meets the requirements of the law. That in effect is being removed here. Here the final authority is the States. That is exactly the kind of flexibility which would mean that there would be no uniform standard across the country to make sure that States are in fact making proper progress toward Clean Water Act standards, and that is a key difference.
Mr. MICA. Reclaiming my time, if I may, again, I think feasibility is still defined under our legislation by the Environmental Protection Agency. They will be a participant in this process. Indeed, the gentleman from New York is offering an amendment that is in search of a problem that does not exist, that we have a broad base of support from the States, from governors, from counties and cities and local officials. What we are trying to do is take some of the unreasonable approaches, and I gave an example, swimable-fishable in the desert, in an area that may have water in it a few days a year. This does not make sense.

So we are just trying to take a common sense approach, look at this, and move forward.

Mr. MINETA. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of the amendment.

Adoption of the amendment will preserve the current, cooperative system of States and EPA combining in the protection of State water quality consistent with the States' goals and desires.

Designated uses are set by the States. They reflect the use of the waterbody which the State determines is appropriate—not what the Federal Government determines is appropriate. Currently, States may change a designated use if attaining the use is not feasible because the more stringent controls would result in substantial and widespread economic and social impact. The bill would expand the ability to down grade water quality standards if a State determines that the costs of achieving the designated use are not justified by the benefits. This gives much too great an emphasis on cost at the expense of environmental and human health impacts. Cost is and always should be of concern in the Clean Water Act. However, cost should be used when determining the method of achieving water quality goals—it should not operate as a limit upon those goals.

If this amendment is rejected, the bill would allow cost to become the overriding concern in establishing water quality standards. That is not the way to achieve expected water quality.

The American people want and expect clean, healthy water in their rivers, lakes and coastal areas. The Nadler amendment will help assure that the wishes of the people are fulfilled. Support the amendment.

Mr. WAMP. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. I came to the well yesterday and talked about the pendulum of regulation being pulled back to the middle. Not back to where we were, but to where we should be based on a reasonable balance of regulation.

One of the other defining issues, I believe, in this new Congress is this notion of do we trust those that we elect to office in our respective States with the day-to-day management of the people in those States. We do not have to federally micro-manage every specific element of every program.

We need to Clean Water Act. We do agree with the concept of clean water. But overregulation, I believe, is what brings us to this debate in 1995 to amend the Clean Water Act with some reasonable amendments. I believe the States will do the right thing. I believe the elected leadership of our States are closer to the people, they are more responsible to the people. And I believe that sometimes costs can shut down a free market and there needs to be a reasonable balance of regulation.

That is what we are here today, yesterday, and every tomorrow to debate with these revisions to the Clean Water Act.

I clearly believe that this amendment goes too far again with Federal micro-management of many decisions that can be best made by our States. The 10th amendment clearly articulates the difference here between the Federal micro-management and the rights we should have in our States. Mr. Chairman, I encourage our friends from both sides of the aisle to oppose this amendment.

Mr. NADLER. Mr. Chairman, I ask unanimous consent to proceed for 2 additional minutes.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. NADLER].

The question was taken; and the Chairman announced that the noes appeared to have it.

The vote was taken by electronic device, and there were—aye 121, noes 294, not voting 19, as follows: [Roll No. 322]
The Clerk announced the following pairs:

On this vote:

Mrs. Collins of Illinois for, with Mr. Watts against.

Mr. Moakley for, with Mr. Barton against. Miss Collins of Michigan for, with Ms. Dunn of Washington against.

Mr. MASCARA and Ms. FURSE changed their vote from "aye" to "no." Mr. HOYER changed his vote from "no" to "aye".

So the amendment was rejected. The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR OBERSTAR

Mr. OBERSTAR. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. OBERSTAR:

Page 100, strike line 5 and all that follows through the first period on line 10 on page 101.

Page 102, line 1, strike "Such demonstration" and all that follows through the first period on line 10.

Page 114, strike line 17 and all that follows through line 4 on page 115.

Page 117, line 6, strike "(q)" and insert "(p)."

Page 117, line 10, strike "(p)" and insert "(q)."

Page 117, line 12, strike "(r)" and insert "(p)."

Mr. OBERSTAR. Mr. Chairman and colleagues, nonpoint source pollution is the next frontier of our clean water program. The Nation has done very well in cleaning up pollution from point sources. Over the past 20-plus years since the Clean Water Act was enacted in 1972, industry and municipalities both have spent on the order of $230 billion cleaning up point sources.

Yet, although a measure of progress has been made in our lakes and streams, we still have unacceptably high levels of pollution, principally from agricultural and other nonpoint sources. The Clean Water Act does not require protection of the nonpoint source program. EPA has no enforcement authority. The State and local governments have no enforcement authority:

This scenario, and in these tight budget times, that language becomes a self-fulfilling prophecy. If we get close, say $50 billion in appropriation, but less than $100 billion, there is no requirement for enforcement. There is some sort of language that suggests that if the administrator of EPA and the State together certify that the amounts appropriated are sufficient to meet the requirements of the section, that the deadline then will be enforced.

I do not think that will ever happen. I do not think we are ever going to have a Governor saying less will do. That bill died with the 103d Congress, and in the current legislation, the bill before us does attempt to deal with the issue of nonpoint source. I commend our current chairman, the gentleman from Minnesota [Mr. OBERSTAR], for attempting to address this issue.

However, there are two fatal shortcomings in this bill that make the nonpoint source program utterly ineffective. The first is that it introduces into this debate a totally new concept. On section 319 (B), subsection 7, there is language providing for an exemption for whole farm or ranch natural resources management plans, but no where in the bill are those two items defined. Nowhere in legislative language do we have those concepts defined.

Yes, there is some reference to it in committee report language, but as we all know, when an issue of this kind is challenged in court, the court does not look to committee report language. It scrutinizes at the debate that we conduct here on the floor. It looks to the legislative language, and there is no definition of what is a whole farm or a ranch natural resources management plan.

The bill, therefore, in that section, where it should be addressing runoff from open sources, pesticides, fungicides, rodenticides, fertilizers, herbicides, makes no such reference, has no control mechanism. Then in a further section, the bill provides some funding, for which I do commend our chairman.

It starts off at $100,000 and goes up to $300,000 a year. Then it says "However, if the appropriation level does not meet the authorization level, the enforcement does not follow." The State is not required to enforce the program. EPA has no enforcement authority.

This scenario, and in these tight budget times, that language becomes a self-fulfilling prophecy. If we get close, say $50 billion in appropriation, but less than $100 billion, there is no requirement for enforcement. There is some sort of language that suggests that if the administrator of EPA and the State together certify that the amounts appropriated are sufficient to meet the requirements of the section, that the deadline then will be enforced.

I do not think that will ever happen. I do not think we are ever going to have a Governor saying less will do more.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. OBERSTAR] has expired.

(By unanimous consent, Mr. OBERSTAR was allowed to proceed for 2 additional minutes.)
Mr. OBERSTAR. Mr. Chairman, although we know the pressures and constraints and we know very well what enormous pressures there will be on Governors not to move to the stage of compliance, I want to see compliance. I want to see our open spaces, runoff of pollution from open lands, cleaned up. That is the next frontier. That is the challenge that we must meet. Their bill gives 19 years to get to that point, but the deadline will always be a mirage. It will always be out there just beyond our grasp because the funding will never be there.

I urge my colleagues to support my amendment, which strikes those provisions and puts some teeth into the non-point source provisions of this bill, which otherwise are reasonably good.

Mr. SHUSTER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I am surprised that my good friend from the great agricultural State of Minnesota would come forward with a provision that really guts, eliminates whole farm planning in the State's non-point source management program. Essentially what this amendment says is, once again, we do not trust the States. Once again, we in Washington know best.

In fact, we have a letter from the National Governors Association dated just yesterday in which they urge strong support for the language that we have in the bill. They say, "We support this approach to non-point source pollution. So the Governors are strongly in support of what we are attempting to do here, and I think it is time that we trust our States and do not come to the conclusion that Washington always know best."

The whole farm plan is a voluntary initiative that makes environmental sense. What is very significant is that there must be approval from the water quality people in the State, through a written memorandum of agreement, that the whole farm plan is consistent with a non-point source management program before such a whole farm plan can be adopted in the State.

That is fair. That says that we do put emphasis on the environment. That says that we have got to be a non-point source management program before you can have a State.

Further, I may not agree with too much of what the Clinton administration is attempting to do, Mr. Chairman, but the Clinton administration, and I say to my friends on the other side of the aisle, the Clinton administration has proposed the whole farm plan in the 1995 farm bill. It is a Clinton farm initiative and it is a good one, and we should support it.

In fact, as to the issue of the definition of what this plan should be, first of all, it is indeed defined in the report; but much more importantly than being defined in the report, we looked to the Commission on Agriculture and the report before this House to define it in the farm bill.

That is where the definition should take place. It is a farm issue. The farm bill should be the place where the definition is provided. We have confidence in the ability of the Department of Agriculture to do that. Further, the gentleman's amendment also strikes the safeguards against unfunded mandates. This is an extremely important point.

The last thing I think we want to do around here is eliminate safeguards against unfunded mandates. If the appropriation is enough in any given year to allow the States to implement the program, there is no slippage of deadlines.

For all of those reasons, I think we should support our farmers, we should support our Governors, we should support our States, and we should reject this amendment.

Ms. FURSE. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I have here in my hand a letter from the Governor of Oregon. He says in this letter, "The State of Oregon is opposed to H.R. 961. This bill includes several unacceptable provisions that would undermine the careful balance of the Clean Water Act."

He goes on to say, "Proposals raise significant concerns that the progress made in improving water quality over the last 20 years will be traded in for short-term economic gains without sufficient consideration of the long-run costs."

"The proposals," he says, "which raise the greatest concern in Oregon include failure to add clear deadlines, goals, and consequences to the non-point source program."

For 95 percent of Oregon's 100,000 miles of streams, non-point pollution is the only source of pollution. Yet H.R. 961, as the Governor has said, does not provide clear guidance or goals to address non-point source pollution. Even worse, the bill would repeal the State's existing coastal zone non-point pollution programs.

In other words, for 95 percent of the State's streams, the Oregon streams, H.R. 961 would not only fail to make any progress in combating water pollution problems, it would actually undermine existing programs.

Mr. Chairman, I find it a little ironic that the 104th Congress, which has repeatedly said it is a protector of States' rights, is now advocating to pull the rug from under States like Oregon which are diligently trying to improve the quality of life inside their borders.

There is absolutely no point to H.R. 961's non-point provisions. I urge my colleagues to oppose them by supporting the amendment of the gentleman from Minnesota [Mr. OBERSTAR] which would put teeth into non-point source pollution protections.

Mr. EMERSON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in strong opposition to the gentleman from Minnesota's amendment to strike the provisions of the bill supporting the concept of whole farm and ranch management programs. The provisions as included in the bill have the support of many major commodity organizations (including the National Corn Growers, National Cotton Council, National Corn Growers, American Soybean Association), several farm and agribusinesses organizations (American Farm Bureau, National Council of Farm Cooperatives), along with that of the National Governors Assocation and the National Association of the State Departments of Agriculture. These provisions direct the EPA Administrator, in coordination with the U.S. Department of Agriculture, to consult with individual States in order to reduce or eliminate conflicting requirements and guidelines relating to nonpoint source pollution—this amendment removes those incentives.

As I have stated in this body many times over the years, American farmers and ranchers are stewards of the land. No one has a greater interest in maintaining and improving the quality of their soil and water than the domestic farm and ranch producer. I have also noted that the hard-working men and women of today's farming and ranching community are willing and able to further commit themselves to continued responsible soil and water practices. These provisions direct farmers and ranchers to work with their individual State in developing and implementing a voluntary plan to address nonpoint source pollution.

For too long, agricultural producers have been subject to onerous rules and regulations from both the federal and state level. In many cases, this confusion has deterred efforts to exercise nonpoint source pollution reduction efforts. By rejection of this amendment, farmers and ranchers will be able to utilize sound conservation practices, such as Best Management Practices, low-tillage, no-tillage, buffer strips, and a variety of other USDA approved management practices in their crop production efforts.

Individual farmers and ranchers finally deserve the opportunity to prove their commitment to nonpoint source pollution reduction without the heavy-handed, inflexible mandates of Washington's federal bureaucracy. I ask the Members of this body to reject this attempt to take away incentives to provide some much-needed flexibility to our nation's farmers and ranchers to adopt proven plans to improve water quality on agricultural lands.

Mr. MINETA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I strongly support the amendment. It would eliminate two of the most egregious loopholes in the nonpoint source section of the bill.
First, the amendment would strike a provision that exempts agricultural producers from the nonpoint provisions of the Clean Water Act, if a producer has in place a plan referred to as a “whole farm or ranch natural resources management plan.” I want to be clear at the outset. I have no objection to the concept of whole farm plans. It makes a lot of sense for farms that are subject to numerous planning requirements to consolidate them into a comprehensive management plan. But that is not what H.R. 961 does.

H.R. 961 creates a mechanism for escape from Clean Water Act coverage without any assurance whatsoever that a farm plan will even address nonpoint source pollution.

Any farmer who prepares a document and calls it a whole farm plan can be out of the nonpoint program entirely. The bill contains no specifications or standards as to what the farm plan should address, or what it should attempt to accomplish.

There is no requirement that the State or Federal environmental agencies with expertise in protecting water quality play any role in ensuring that these plans address water quality concerns. In fact, there is no requirement that the plans include measures to address water quality concerns.

H.R. 961 removes from the reach of the Clean Water Act the single greatest source of water quality impairment. By allowing whole farm plans to serve as compliance, the bill takes away from States the ability to require nonpoint control by these producers, even if the State program is not making progress in controlling nonpoint pollution. This will unnecessarily hamper the efforts of States in achieving environmental results. The Oberstar amendment also would strike provisions that improperly make environmental protection contingent on receipt of Federal funding. Requirements on States for assessments, nonpoint program implementation and monitoring would all be delayed one year for each year that the Federal appropriation for nonpoint programs falls even one dollar short of the amount authorized. And, the amount of federal assistance provided will be taken into consideration in determining whether a State’s program is making reasonable progress toward attainment of water quality standards.

These concepts of linking Clean Water Act goals with Federal funding are bad policy and are certain to thwart any progress in addressing the largest remaining source of pollution. The Clean Water Act has never been a fully federally funded program. Individuals and corporations have responsibilities not to contaminate their neighbors’ water regardless of whether they receive any payments from the Federal Government. With all of the loopholes in the bill, someone will pay the price. Nonpoint sources of pollution need to do more, not less, to reduce water pollution. That is the only way to avoid disproportionate burdens on industrial and municipal dischargers, and enormous losses to the tourism industry, recreation and others. And, it is the only way we can achieve the quality of water that our citizens expect and deserve.

I urge my colleagues to support the Oberstar amendment.  

☐ 1730

Mr. LATHAM. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strongest possible opposition to the Oberstar amendment. This is an amendment that every single member of the House should oppose.

First of all, as a fourth generation family farmer, I cannot stress strongly enough how offensive the Oberstar amendment is. We, in agriculture, are sick and tired of Washington, DC, bureaucrats treating us with contempt.

There is general agreement among people who understand agriculture that the Best Management Practices are the most effective tools for reducing agricultural run-off. That is the responsibility principle that this bill seeks to put into affect.

And, who are the experts on agricultural run-off? I assure you that the answer is not the bureaucrats at EPA. H.R. 961 puts the responsibility of developing Best Management Practices in the hands of the USDA.

The Oberstar amendment demonstrates contempt for farmers and contempt for the USDA.

As far as the unfunded mandates portion of the Oberstar amendment, President Clinton has already signed into law the Unfunded Mandates Reform Act to prevent exactly this type of legislation from being passed by Congress. The provisions of H.R. 961 are simple, but fair. The bill makes an estimate of annual needs toward attaining the goals of the Clean Water Act. If Congress does not appropriate these funds, compliance deadlines for the States are delayed.

This is the type of unfunded mandate relief that both Houses of Congress have already approved overwhelmingly and is already Federal law.

The Oberstar amendment says “forget all that, let’s pretend that the unfunded mandate bill never passed. Let’s go back to business as usual, passing the buck as we’ve done before.”

Even if you didn’t support unfunded mandate reform, you should respect that this is now the law of the land. No Member has to now consider how you feel about the rest of the bill, should support this amendment.

Vote “no” on the Oberstar amendment. It’s an insult to farmers. It deserves to be defeated resoundingly. In fact, it deserves to be defeated unanimo-
The Clerk announced the following pairs:

On this vote:
Mrs. Collins of Texas for, with Mr. Bono against.

Mr. Markley for with Ms. Dunn against.

The Clerk announced the following pairs:

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On this vote:
Mrs. Collins of Texas for, with Mr. Bono against.

Mr. Markley for with Ms. Dunn against.

The Clerk announced the following pairs:

On this vote:
Mrs. Collins of Texas for, with Mr. Bono against.

Mr. Markley for with Ms. Dunn against.
"(ii) take into account the effects of all fish and shellfish contaminants, including the cumulative and synergistic effects;"  
"(iii) assure the protection of subpopulations who consume more than average amounts of fish or shellfish or are particularly susceptible to the effects of such contamination;"  
"(iv) address race, gender, ethnic composition, and which enhance the public health or environment."  
"(V) are based on a margin of safety that takes into account the uncertainties in human health impacts from such contamination;"  
"(VI) evaluate assessments of health risks of contaminated fish and shellfish that are used in pollution control programs developed by the Administrator under this Act."  

(4) STATE REPORTS.—Section 305(b)(1) (33 U.S.C. 1335(b)(1)) is amended—  
(A) by striking "and" at the end of subparagraph (D);  
(B) by striking the period at the end of subparagraph (E) and inserting "; and"; and  
(C) by adding at the end the following:  
"(F) a list identifying bodies of water for which signs were posted under section 308(e)(1) in the preceding year.".  

(d) CIVIL PENALTIES.—  
(1) ENFORCEMENT OF LOCAL PRETREATMENT REQUIREMENTS.—  
(A) COMPLIANCE ORDERS.—  
(i) Section 309(a)(1) (33 U.S.C. 1339(a)(1)) is amended by inserting after "of this Act," the following: "or is in violation of any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act.".  
(ii) ISSUANCE OF ORDERS.—Section 309(a)(3) is amended by inserting before "he shall" the following: "or knowing that the person violated any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act.".  

(B) CRIMINAL PENALTIES.—Section 309(c)(3)(A) is amended by inserting before "and who knows" the following: "or knowingly violates any requirement imposed in a pretreatment program approved, under section 402(a)(3) or 402(b)(8) of this Act.".  

(C) ADMINISTRATIVE PENALTIES.—Section 309(g)(1) is amended by inserting after "by or under this Act by 40 percent or more," or "by or under this Act by 20 percent or more," the following:  
"(i) in the case of a class I civil penalty, and paragraph (2)(B) in the case of a class II civil penalty;"; and  

(D) AMOUNTS OF ADMINISTRATIVE CIVIL PENALTIES.—  
(A) GENERAL RULE.—Section 309(g)(2) is amended to read as follows:  
"(2) AMOUNT OF PENALTIES; NOTICE; HEARING.—  
"(A) MAXIMUM AMOUNT OF PENALTIES.—The amount of a civil penalty under paragraph (1) may not exceed $25,000 per violation per day for each day during which the violation continues.  
"(B) WRITTEN NOTICE.—Before issuing an order assessing a civil penalty under this subsection, the Administrator shall provide a reasonable opportunity to be heard and to present evidence.  
"(C) HEARINGS NOT ON THE RECORD.—If the proposed penalty does not exceed $25,000, the hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.  
"(D) HEARINGS ON THE RECORD.—If the proposed penalty exceeds $25,000, the hearing shall be held in accordance with section 554 or 556 of title 5, United States Code. The Administrator may issue rules for discovery procedures for hearings under this subpart.  
"(E) CONFIRMING AMENDMENTS.—Section 309(g) is amended—  
(i) in paragraph (1) by striking "class I civil penalty" and "class II";  
(ii) in the second sentence of paragraph (4)(C) by striking "(2)A in the case of a class I civil penalty and paragraph (2)(B) in the case of a class II civil penalty" and inserting "(2)"; and  
(iii) in the first sentence of paragraph (8) by striking "assessment—" and all that follows through "manner of any penalty previously imposed on the violator by a court or administrative agency for the same violation or violations," after "economic impact of the penalty on the violator.";  

(B) ADMINISTRATIVE PENALTIES.—Section 309(g)(3) is amended—  
(i) by striking "or is in violation of any penalty previously imposed on the violator by a court or administrative agency for the same violation or violations," after "resulting from the violation,";  
(ii) by striking the amount of any penalty previously imposed on the violator by a court or administrative agency for the same violation or violations, after "resulting from the violation,";  

(C) LIMITATION ON DEFENSES.—Section 309(g)(1) is amended by adding at the end the following: "In a proceeding to assess or review a penalty under this subsection, the adequacy of consultation between the Administrator or the Secretary, as the case may be, and the State shall not be a defense to assessment or enforcement of such penalty.".  

(2) LIMITATION ON DEFENSES.—Section 309(g)(1) is amended by adding at the end the following: "In a proceeding to assess or review a penalty under this subsection, the adequacy of consultation between the Administrator or the Secretary, as the case may be, and the State shall not be a defense to assessment or enforcement of such penalty.".  

(3) MINIMUM PENALTIES FOR SERIOUS VIOLATIONS—  
(A) MINIMUM AMOUNT OF PENALTIES.—The amount of a civil penalty may not be compromised below the amount determined by adding—  
"(1) the minimum amount required for recovery of economic benefit under subsection (h)," to  
"(2) 50 percent of the difference between the amount of the civil penalty assessed and such minimum amount.".  

(B) MINIMUM AMOUNT FOR SERIOUS VIOLATIONS.—Section 309 is further amended by adding at the end the following:  
"(i) MINIMUM CIVIL PENALTIES FOR SERIOUS VIOLATIONS AND SIGNIFICANT NONCOMPLIERS.—  
"(1) SERIOUS VIOLATIONS.—Notwithstanding any other provision of this section (other than paragraph (2)), the minimum civil penalty which shall be assessed and collected under this section from a person—  
"(A) for a discharge from a point source of a hazardous pollutant which exceeds otherwise violates any applicable effluent limitation established by or under this Act by 20 percent or more, or  
"(B) for a discharge from a point source of a pollutant (other than a hazardous pollutant) which exceeds otherwise violates any applicable effluent limitation established by or under this Act by 40 percent or more, shall be $1,000 for the first such violation in a 180-day period.  
"(2) SIGNIFICANT NONCOMPLIERS.—Notwithstanding any other provision of this section, the minimum civil penalty which shall be assessed and collected under this section from a person—  
"(A) for the second or more discharge in a 180-day period from a point source of a hazardous pollutant which exceeds otherwise violates any applicable effluent limitation established by or under this Act by 20 percent or more, or  
"(B) for the second or more discharge in a 180-day period from a point source of a pollutant (other than a hazardous pollutant) which exceeds otherwise violates any applicable effluent limitation established by or under this Act by 40 percent or more, shall be $5,000 for each of such violations.  
"(3) MANDATORY INSPECTIONS FOR SIGNIFICANT NONCOMPLIERS.—The Administrator
shall identify any person described in paragraph (2) as a significant noncomplier and shall conduct an inspection described in section 402(q)(2) of this Act of the facility at which the violations were committed. Such inspections shall be conducted at least once in the 180-day period following the date of the most recent violation which resulted in such person being identified as a significant noncomplier.

(4) ANNUAL REPORTING.—The Administrator shall transmit to Congress and to the Governors of the States, and shall publish in the Federal Register, on an annual basis, a list of all persons identified as significant noncompliers under paragraph (3) in the preceding calendar year and the violations which were the basis for such classification.

(5) HAZARDOUS POLLUTANT DEFINED.—For purposes of this subsection, the term ‘‘hazardous pollutant’’ has the meaning the term ‘‘hazardous substance’’ has under subsection (c)(7) of this section.

(11) STATE PROGRAM.—Section 402(b)(7) (33 U.S.C. 1342(b)(7)) is amended to read as follows:

‘‘(7) To abate violations of the permit or the permit program which shall include, beginning on the last day of the 2-year period beginning on the date of the enactment of the Clean Water Compliance and Enforcement Improvement Amendments Act of 1995, a program comparable to the Federal penalty program under section 309 of this Act and which shall include at a minimum criminal, civil, and civil administrative penalties which may include other means and methods of enforcement, which the State demonstrates to the satisfaction of the Administrator are actually effective as the Federal penalty program;’’

(12) FEDERAL PROCUREMENT COMPLIANCE INCENTIVE.—Section 508(a) (33 U.S.C. 1368(a)) is amended by striking ‘‘and’’ at the end of paragraph (3) and inserting ‘‘or’’.

(13) NATIONAL POLLUTANT DISCHARGE ELIMINATION PERMITS.—

(1) WITHDRAWAL OF STATE PROGRAM APPROVAL.—Section 402(b) (33 U.S.C. 1342(b)) is amended by adding at the end the following:

‘‘(b) Persons being identified as a significant industrial user of the treatment works, as defined by the Administrator by regulation, to prepare and submit to the Administrator quarterly discharge monitoring reports or more frequent discharge monitoring reports if the Administrator requires. Such reports shall contain such information as the Administrator shall require by regulation.

(2) REPORTING OF HAZARDOUS DISCHARGES.—

(‘‘A’’) General rule.—If a discharge from a point source for which a permit is issued under this section exceeds an effluent limitation contained in such permit which is based on an acute water quality standard or on any other discharge which may cause an exceedance of an acute water quality standard or otherwise is likely to cause injury to persons or damage to the environment or to pose a threat to human health and the environment, the person holding such permit shall notify the Administrator, in writing, of such discharge not later than 2 hours after the later of the time at which such discharge commenced or the time at which the permittee knew or had reason to know of such discharge.

‘‘(B) SPECIAL RULE FOR HAZARDOUS POLLUTANTS.—If a discharge described in subparagraph (A) is of a hazardous pollutant (as defined in section 309(k)) of this Act, the person holding such permit shall provide the Administrator with such additional information on the discharge as may be required by the Administrator. Such additional information shall include, to the Administrator, for the 24-hour period after the later of the time at which such discharge commenced or the time at which the permittee became aware of such discharge, and the manner in which such discharge being taken (i) to remediate the problem caused by the discharge and any damage to the environment, whether the discharge is continuing, and the measures being taken (ii) to avoid a repetition of the discharge.

(2) SIGNATURE.—All reports filed under paragraph (1) must be signed by the highest ranking official having day-to-day managerial and operational responsibility for the facility at which the discharge described in such report occurred, and by another ranking official having day-to-day managerial and operational responsibility for the facility at which the discharge occurred.

(3) LIMITATION ON ISSUANCE OF PERMITS TO SIGNIFICANT NONCOMPLIERS.—Section 402 is further amended by adding at the end the following:

‘‘(j) SIGNIFICANT NONCOMPLIERS.—No permit may be issued under this section to any person (other than a publicly owned treatment works) identified under section 309(k)(3) as a significant noncomplier or to any public or common control with the identified person, owning or controlling the identified person, or under common control with the identified person, until the Administrator or the State or States in which the violation or violations determined by the Administrator to be a major industrial or municipal discharger of pollutants into the navigable waters shall prepare and submit to the Administrator a monthly discharge monitoring report. Any other person holding a permit issued under this section shall prepare and submit to the Administrator quarterly discharge monitoring reports or more frequent discharge monitoring reports if the Administrator requires. Such reports shall contain such information as the Administrator shall require by regulation.

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occurs determines that the condition or condition giving rise to such violation or violations has been corrected. No permit application submitted after the date of the enactment of this subsection may be approved unless the application includes a list of all violations of this Act by a person identified under section 303(j) of this Act during the 3-year period preceding the date of submission of the application and evidence indicating whether the underlying cause of each such violation has been corrected."

(10) APPLICABILITY.—The amendments made by this subsection shall apply to all permits issued before, on, or after the date of the enactment of this Act; except that—

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

(B) with respect to all other permits issued before such date of enactment, such amendments shall take effect on the last day of the 2-year period beginning on such date of enactment.

(ii) by adding at the end the following: "The Administrator may issue a permit for the discharge or threat to occur determines that the condition or condition giving rise to such violation or violations has been corrected.

(11) EXPEDITED STATE PERMITS.—Section 402(d) (33 U.S.C. 1342(d)) is amended by adding at the end the following:

"(2) APPLICABILITY.—The amendments made by this subsection apply to permits issued before, on, or after the date of the enactment of this Act; except that—

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

(B) with respect to all other permits issued before such date of enactment, such amendments shall take effect on the last day of the 1-year period beginning on such date of enactment.

(i) by inserting after the comma at the end of clause (D) "including a decision to deny a petition by interested person to veto an individual permit issued by a State;";

(ii) by inserting after the comma at the end of clause (E) "including a decision not to include any pollutant in such effluent limitation or to impose such limitation;"

(iii) by inserting after the comma at the end of clause (G) "the Administrator has or is made aware of information indicating that such pollutant is present in any discharge subject to such limitation;"; and

(iv) by inserting at the end the following: "(vii) in issuing or approving any water quality standard under section 303(c) or 303(d), (H) in issuing any water quality criterion under section 303(a), including a decision not to address any effect of the pollutant subject to such criterion if the Administrator has or is made aware of information indicating that such effect may occur, and".

(i) NATIONAL CLEAN WATER TRUST FUND.—

(1) IN GENERAL.—Title V (33 U.S.C. 1361-1377) is amended by redesignating section 519 as section 522 and by inserting after section 518 the following new section:

"SEC. 519. NATIONAL CLEAN WATER TRUST FUND.

"(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the 'Clean Water Trust Fund'.

"(b) Transfers to Trust Fund.—There are hereby appropriated to the Clean Water Trust Fund amounts equal to the penalties collected under section 303(c), 303(d), and the penalties collected under section 505(a) of this Act (excluding any amounts ordered to be used to carry out mitigation projects under section 309 or 505(a), as the case may be).

"(c) Administration of Trust Fund.—The Administrator shall administer the Clean Water Trust Fund. The Administrator may use moneys in the Fund to carry out inspections and enforcement activities pursuant to this Act. In addition, the Administrator may make such amounts of money in the Fund as the Administrator determines appropriate available to carry out title VI of this Act."

(2) CONFORMING AMENDMENT TO STATE REVOLVING FUND PROGRAM.—Section 607 (33 U.S.C. 1387) is amended—

(A) by inserting "(a) IN GENERAL.—" before "There is;"; and

(B) by adding at the end the following:

"(1) TREATMENT OF TRANSFERS FROM CLEAN WATER TRUST FUND.—For purposes of this title, amounts made available from the Clean Water Trust Fund under section 519 of this Act shall be available as funds authorized to be appropriated to carry out this title and as funds made available under this title.

"(2) APPLICABILITY.—Sections 101(h), 303(g)(6)(A), 505(a)(1), 505(b), 505(g), and 505(i) of the Federal Water Pollution Control Act, as inserted or amended by this section, shall be applicable to all cases pending under such Act on the date of the enactment of this Act and all cases brought on or after such date of enactment relating to violations which occurred before such date of amendment.

Redesignate subsequent subsections of section 313 of the bill accordingly.

Page 81, line 4, strike "(h)") and insert "(i)."

Page 131, line 5, strike "(vii)" and insert "(u)."

Page 188, line 21 strike "(s)" and insert "(v).

Page 192, line 6, strike "(v)" and insert "(w).

Page 216, line 11, strike "by" and all that follows through "1986" and strike line 13 and insert "by inserting after section 519:"

Page 216, line 14, strike "1986" and insert "2002."

Page 131, line 5, strike "(viii)

Page 144, line 11, strike "or" and insert "and, in addition, shall".
Mr. PALLONE. Mr. Chairman, my amendment seeks to improve enforcement of the Clean Water Act. Based on EPA data, almost 20 percent of U.S. major industrial, municipal and Federal facilities were in significant noncompliance with their Clean Water Act permits.

The EPA inspector general has found that penalty assessments are not sufficient to recover the economic benefits gained by noncompliance with the Clean Water Act. Small fines and lengthy time limits to achieve compliance promote an it-pays-to-pollute mentality, and failure to recover economic benefits places those who comply with the law at an economic disadvantage relative to those who are in violation of the law.

The Clean Water enforcement program should be strengthened to promote greater incentives to comply with the law.

Mr. Chairman, in New Jersey we have on the books as a State law Clean Water enforcement amendments, which became law in May of 1990, that increase enforcement. In March of 1995, the New Jersey department of environmental protection released their 4th annual report of the Clean Water Enforcement Act in New Jersey. Their findings reflect a significant decrease in penalty assessments as a result of increased compliance. The number of significant noncompliers declined from 70 to 44 in a given year.

Basically, the enforcement provisions in this amendment require State programs to establish mandatory minimum penalties for serious violations of and significant noncompliance with the Clean Water Act. They require penalties recover at least economic benefits, and they improve and increase the frequency of discharge reporting.

In addition to the enforcement provisions, this amendment would remove obstacles to citizen suits. The 1972 Clean Water Act included authority for citizens to sue polluters, thereby recognizing the U.S. EPA and the States might be unable or unwilling to aggressively pursue all violators, and citizen suits supplement enforcement tool.

According to a U.S. Department of Justice statistical report, private citizen actions over 5 fiscal years have recovered approximately $11 million in penalties and interest. Basically, what we do is this amendment allows citizens to sue without penalties, overturning a 1987 Supreme Court case which made those kinds of actions more difficult.

The amendment also increases citizens’ rights to know, through posting notices and fish consumption advisories. There are currently no Federal requirements the public be notified when water quality standards are violated. There are no uniform requirements for determining the nature and extent of fish and shellfish bans. Essentially, we have posting of notice requirements for areas where you should not swim or fish, and also fish consumption advisories.

Lastly, Mr. Chairman, I would point out that this amendment establishes a national Clean Water trust fund to carry out inspections and enforcement pursuant to the act. The idea is the penalties we would get for increased enforcement would go into this fund, and they would be used to carry out the purposes of the act.

Mr. Chairman, I ask that this amendment be considered. I think that one of the most important things we can do is increase enforcement of the Clean Water Act, and that is the primary purpose of this amendment.

Mr. SHUSTER. Mr. Chairman, I rise in opposition to this amendment.

Mr. Chairman, I rise in strong opposition to this amendment. This amendment is 5 congressional pages of mandatory enforcement provisions inserted into the Clean Water Act. This amendment not only is unnecessary but could be, and is, counterproductive to effective enforcement of the act.

This amendment would not do this, this amendment would deny due process to alleged violators in connection with the imposition of administrative penalties. Penalties could be imposed without the alleged violators having the right to due process.

Further, this amendment specifies minimum penalties, mandatory minimum penalties, that must be imposed, and so severely limits the abilities of the enforcement authorities, the EPA and the States, to sit down and compromise proposed penalties, to negotiate proposed penalties. In some instances, it would bar such compromises altogether.

Now, this certainly is not flexibility. The National Governors’ Association is strongly opposed to this amendment. The States water quality officials are strongly opposed to this amendment, and, indeed, this amendment also would allow duplicative enforcement by citizens’ groups of violations that have been the subject of State enforcement actions. Not only could the State bring an enforcement action, but citizens’ groups could come along and also bring an enforcement action, and even worse, citizens’ groups could bring an enforcement action against something that already has been corrected. Let me emphasize that.

Even though something has been corrected, citizens’ groups would be able to reach back and bring an enforcement action against somebody even though they corrected the problem.

In sum, this amendment imposes greater rigidity on the Clean Water Act. It would encourage, rather than discourage, protracted litigation. This is a lawyer’s paradise, and this should be defeated.

Mr. MINETA. Mr. Chairman, I rise in support of this amendment.

Mr. Chairman, it is very important that citizens be notified when a beach or lake where they take their children to swim or fish is subject to a fishing ban due to fish contamination, or not meeting water quality standards. This amendment would give the public the information it deserves, so that people can protect themselves from ill health caused by contaminated fish or swimming in polluted water.

It makes sense that where a court finds that a discharger has violated the Act, the penalty should, at a minimum, recoup the economic benefit that the violator realized as a result of its violation. Otherwise, we would lose the advantage over its competitors who complied with the law. This amendment would prevent windfalls that reward polluters.

These are just a few of examples of how the amendment would strengthen enforcement and other provisions of the Act, and ultimately improve the quality of our Nation’s waters and the protection provided to our citizens.

Mr. Chairman, I urge support for the amendment.

Mr. DeFazio. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the thrust of this amendment is to bring about mandatory enforcement, and I do not find that as a shocking thing, or something that is undesirable or should not be part of this bill.

I do not believe anybody who is more than 25 or 30 years old in this country has any problem remembering the bad old days, the days when the Cuyahoga River in Ohio was so polluted that it actually caught fire, the days when the Willamette River in Oregon, a State highly regarded for its environmental laws, was not fishable, swimable, or drinkable, and, thanks to the Clean Water Act, mandated enforcement, those rivers have been substantially cleaned up.

But work remains to be done, and I do not see how those on the other side of the aisle who are diluting the standards which would be enforceable under this bill, and minimizing them, and moving significant areas of concern to voluntary compliance, would object for those few things that they leave to be mandatorily regulated, that to be the exception. Even mandatorily, enforcement, those rivers have been substantially cleaned up.

But work remains to be done, and I do not see how those on the other side of the aisle who are diluting the standards which would be enforceable under this bill, and minimizing them, and moving significant areas of concern to voluntary compliance, would object for those few things that they leave to be mandatorily regulated, that to be the exception. Even mandatorily, enforcement, those rivers have been substantially cleaned up.

The idea is that as a shocking thing, or something that is undesirable or should not be part of this bill.

Mr. Chairman, it is very important that citizens be noticed when a beach or lake where they take their children to swim or fish is subject to a fishing ban due to fish contamination, or not meeting water quality standards. This amendment would give the public the information it deserves, so that people can protect themselves from ill health caused by contaminated fish or swimming in polluted water.

It makes sense that where a court finds that a discharger has violated the Act, the penalty should, at a minimum, recoup the economic benefit that the violator realized as a result of its violation. Otherwise, we would lose the advantage over its competitors who complied with the law. This amendment would prevent windfalls that reward polluters.

These are just a few of examples of how the amendment would strengthen enforcement and other provisions of the Act, and ultimately improve the quality of our Nation’s waters and the protection provided to our citizens.

Mr. Chairman, I urge support for the amendment.
state-of-the-art, fully in compliance. Now should another mill, which has drug its feet thus far and is not in compliance with existing law, be allowed to continue in that vein and economically benefit? This amendment says no, that the fine would be commensurate with the economic benefit. This amendment says no, that the economic benefit that they have received, otherwise, what is the point of having the Clean Water Act?

In regard to the State administrative actions, I know the gentleman on the other side mentioned that he did not like the idea of State administrative actions, that they should be able to continue citizens’ suits, but I would point out that in many cases courts have construed the precision provision so as to make it almost any State administrative action, no matter how inadequate, has had a prescriptive effect on citizens’ suits. So we want citizens to be able to bring actions where necessary to enforce the act, and again, in the past those citizen suits have really done a lot to enforce the Clean Water Act and should be encouraged.

Mr. DeFAZIO. Mr. Chairman, I thank the gentleman from New Jersey [Mr. PALLONE] for his good work on this amendment and urge my colleagues to support the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey [Mr. PALLONE].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. PALLONE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 106, noes 299, not voting 29, as follows:

Mr. PALLONE. Mr. Chairman, will you have the ayes and noes as recorded?

Mrs. COLLINS of Michigan for, Ms. Dunn against.

Mr. YOUNG of Alaska. Mr. Chairman, I offer an amendment.

The Clerk read as follows: Amendment offered by Mr. Young of Alaska. The Clerk read as follows: Amendment offered by Mr. Young of Alaska.
any pollutant from a publicly owned treatment works serving Anchorage, Alaska, notwithstanding subsection (j)(1)(A) and notwithstanding whether or not the treatment provided by such treatment works is adequate to remove at least 30 percent of the biological oxygen demanding material.”

Mr. YOUNG of Alaska (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Alaska?

There was no objection.

Mr. YOUNG of Alaska. Mr. Chairman, I request that this amendment be placed in the Record.

Mr. SHUSTER. Mr. Chairman, I will reserve section 301(h) of the Clean Water Act to allow the city of Anchorage which has a waiver of secondary treatment to be relieved of the 30 percent BOD removal requirement. This requirement puts a tremendous burden on the city.

EPA requires the Anchorage Wastewater Utility to remove 30 percent of organic material from sewage before it can be discharged. Meeting this requirement for Anchorage has been difficult. For several years, because sewage inflow is very clean.

In 1991, the utility was approached by 2 fish processors who wanted to discharge 5,000 pounds of fish guts into the system daily. Anchorage approved the request and it made it easier to meet the 30 percent requirement. The discharge was less clean, but the EPA requirement was satisfied. This is a perfect example of why we need cost benefit analysis in our laws.

The Anchorage Wastewater Utility is spending $380,000 per year in increased operating expenses. They will be required to spend more than $4 million within the next 2 years. All this while spending $1 million over 6 years to monitor outflows to ensure there is no negative impact from the discharge.

Had their been some flexibility in the law, Anchorage could have avoided millions of unnecessary expenditures.

I urge support of the amendment.

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Alaska. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Chairman, as I understand it, this is limited to Anchorage, AK.

Mr. YOUNG of Alaska. The gentleman is correct.

Mr. SHUSTER. It makes a lot of sense, and I support the gentleman.

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Alaska. I yield to the gentleman from California.

Mr. MINETA. Mr. Chairman, I just would like to make a short comment that I oppose this amendment. This is just another waiver of standards, another excuse for Appalachia, and it is specifically for Anchorage, AK. If this amendment is adopted, the law will allow for less than primary treatment. I am concerned that the next amendment will be to allow totally untreated sewage to be discharged into coastal waters, whether it is offered by the gentleman from Alabama or amendments that will come forward.

Mr. YOUNG of Alaska. Mr. Chairman, I request permission to revise and extend my remarks.

Mr. VISCLOSKY. Mr. Chairman, I rise today to offer an amendment to H.R. 3948. I urge rejection of the amendment offered by the gentleman from Alaska [Mr. YOUNG].

The amendment was agreed to.

The question is on the amendment offered by Mr. VISCLOSKY.

I urge rejection of the amendment.

Mr. VISCLOSKY. Mr. Chairman, I rise today to offer an amendment to H.R. 3948. I urge rejection of the amendment offered by the gentleman from Alaska [Mr. YOUNG].

The amendment was agreed to.
I urge support of my amendment. Mr. CHAIRMAN, I move to strike the requisite number of words. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I support the amendment. Mr. PALLONE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just also want to indicate support for the amendment of the gentleman from Indiana, [Mr. Visclosky], in setting up this trust fund is certainly just as valid.

There is no question that we need more funding for cleanup, and I would like to see nothing better than to have the money that comes from violations of the Clean Water Act placed into a fund that would be used for more cleanup rather than go to the general Treasury. I think that is the way to go in order to provide additional funding for cleanup.

Mr. VISCLOSKY. Mr. Chairman, I move to strike the requisite number of words.

Mr. SHUSTER. Mr. Chairman, is the gentleman asking for unanimous consent to be recognized for 1 minute?

Mr. VISCLOSKY. Mr. Chairman, I am asking unanimous consent to proceed for an additional 2 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. VISCLOSKY. Mr. Chairman, I would like to respond to the arguments made by the chairman. First of all, the idea that a slush fund would be traded is simply not true. If you look at the total national fines that have been imposed by EPA and the courts, you are talking about $12 million in a year like 1989. You are talking about $28 million in a year like 1993.

Second, that the monies would be used to pay for citizen suits is absolutely not true. I point out in the text of the amendment it states, “Amounts in the fund shall be available, as provided in appropriations acts,” that is your ultimate break on this system, to the administrator to carry out projects to restore and recover waters of the United States from damages resulting from violations of this act which are subject to enforcement actions under this section and similar damages resulting from the discharge of pollutants into the waters of the United States.”

Again, the control of this system is the appropriations process. They are subject to it, and they are only available to clean up polluted waterways in the United States.

The final point the gentleman made, that this would encourage bureaucrats to run amok, again, the break on the
The Coastal States Organization does not want any secret plan to be implemented. The Coastal States Organization, with 30 States involved, representing tens of millions of people, are watching us, and they are saying “Don’t back down.” I thought it was very important, so timely, to present this letter to this Chamber, so that we could all have the benefit of the wisdom of the Governors in the States and the people we are trying to effectively serve.

What we are about today is addressing a most sensitive environmental and public health piece of legislation, yet no undercurrents undermine what we have already done.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana [Mr. VISCLOSKY].

The question was taken, and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. VISCLOSKY. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and the result was—aye...
On this vote:

Mrs. Collins of Illinois for, with Mr. Watts against.

Mr. Moakley for, with Mr. Bono against.

Miss Collins of Michigan for, with Ms. Dunn of Washington against.

Mr. WAXMAN changed his vote from "no" to "aye.

So the amendment was rejected.

The result of the vote was announced as above recorded.

LEGISLATIVE PROGRAM

Mr. GEPHARDT. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise for the purpose of inquiring from the chairman of the committee or the distinguished majority leader if we could know what the schedule is for the remainder of today and tomorrow.

I rise because we were told during the period when the contract was on that when the contract was finished, that the schedule would be a little more family friendly and that we could get people home at a reasonable hour. This is the second night that we are going to be here late.

I realize this is important legislation but as I look at the schedule for next week, there are days when there is not a lot of business that we could perhaps finish this bill. I inquire of the distinguished majority leader if we could perhaps leave fairly soon so that Members could see their families and come back tomorrow and try to finish.

Mr. ARMEY. If the gentleman would yield, let me thank the gentleman for his inquiry. We have been talking to a variety of Members on both the majority and minority side.

There are for a great many of our Members and I missed a number before the House that have very serious consequences to their particular national and local interests. It has been our hope and intention to move this bill to the point that we could complete the work on the bill by 1 p.m. tomorrow because many Members have some departure times that are very strategically important to them there as well.

It is our hope to finish the bill by 1 p.m. tomorrow and to do that in such a way as to not abridge the rights of any Member that chooses to offer the amendment that they in so many cases have so often carefully prepared and so patiently waited their turn to offer, and also to hold without any bias against that Member their right to call their amendments and want to have a vote, a recorded vote, and it is fundamentally that Member's right.

In the meantime we have been in discussions, and I had hoped that by 7 p.m. we would have some greater clarity of understanding to where I could make an announcement. As it is now, I think discussions are still ongoing.

We are still optimistic that we could either continue tonight to a later hour and finish the bill, so that we could all be done with our week this evening, or to see clearly that it is possible for us to rise at that hour and then complete the bill tomorrow in such a time as to convenience those people who are trying to get their departure by 1 p.m. or thereabouts.

The other option that is out there is to take this bill over into next week. That is something that a great many Members also would like to avoid.

Let me just say that we are continuing that information. Perhaps during the course of the next amendment, between now and the next vote that is called, we can have some definitive final understanding of where we can go, and we will be able to make an announcement that defines which of the three alternatives has sort of presented itself with self interest of all Members who are participating in the bill.

Mr. GEPHARDT. I thank the gentleman.

I realize it is difficult to make everything come out on time, but I really believe that there was a great amount of anticipation and excitement among all Members when we talked about making the schedule more family friendly. I admit it is hard to do. I have been in your position, and I know how difficult it is. But in that this bill is not essential, we are not on a strict time line, I really believe it would be helpful if Members could go home at a decent hour, come back tomorrow, get out at 1 p.m., come back on Tuesday and get our work done.

Mr. ARMEY. If the gentleman will yield further, let me just say, I understand that, and again as the gentleman from Missouri knows, we always try to juggle as fairly as possible the heart-felt interests of a large group of different Members with different interests, and we are continuing to work with that.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. GEPHARDT. Mr. Chairman, I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, the distinguished leader from Texas and I have engaged many times over the course of the last 125 days about the schedule, and about getting a more predictable schedule and a more effective schedule and a more family-friendly schedule.

I would just like to ask the leader a couple of questions. How many amendments do we have left on this bill?

Mr. ARMEY. If the gentleman would yield, there are a fairly significant number of amendments, about 15. Then there are questions related at who among the 15 choose to offer their amendment? Do they choose to call recorded votes? Are there agreements that might be made?

Mr. ROEMER. That is my question to the leader, is if we go late tonight, we could be out earlier than 1 p.m. tomorrow and we could make reservations to fly back home at 10 or 11 a.m. tomorrow.

When would we know that? Mr. ARMEY. That is a level of fine tuning that goes even beyond the great expectations of Keynesian fiscal policy in the early 1960's. Certainly we should
be able to get a look at whether or not we can finish the bill tonight or must come back tomorrow. When we get to that definitive point, then we can see the option.

I would not ask Members to stay until midnight tonight, stay late tomorrow, and then come back next week and work all week.

Mr. ROEMER. Would the leader be willing to roll votes until tomorrow and have debate on these serious questions?

I agree with the leader that many of these questions and many of these amendments are very serious. We offered a serious substitute yesterday. Many of these amendments need to be seriously debated, but to then limit this serious debate between now and 1 p.m. tomorrow does not do the service that the leader has talked about.

What about on Tuesday, where you have scheduled the New London National Fish Hatchery Conveyance Act? I think that is the only order of business for Tuesday.

Mr. ARMey. I thank the gentleman again for that recommendation.

Mr. ROEMER. But he is not going to listen to my recommendation.

Mr. ARMey. The gentleman, I think, does not like the disservice or disservice to presume that I have not taken that into consideration up to this point.

Mr. ROEMER. You are the leader, and I am sure you are way ahead of this minority Member.

Mr. GEPHARDT. Perhaps if I could reclaim my time and bring this to a conclusion, because we are now wasting time.

Mr. ARMey. As Randy Quaid says, "I'll get back to you later with the details as quickly as I can."

Mr. GEPHARDT. I know the gentleman is doing everything that he can to bring this to a successful and swift conclusion. Just please know that there is a lot of unhappiness maybe too small, but deep concern and unhappiness, I am sure, on both sides of the aisle about the failure to get out.

The contract is over. It is time for family friendly.

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Let us do everything we can to make that happen.

Mr. THOMAS. Mr. Chairman, will the gentleman yield?

Mr. GEPHARDT. I yield to the gentleman from California.

Mr. ARMey. I thank the gentleman for yielding. I would like to point out there have been nine recorded votes on your side, but I see you have yours on ours.

Mr. GEPHARDT. I understand.

Mr. ARMey. If I may respond to the gentleman?

Mr. GEPHARDT. I yield to the gentleman.

Mr. ARMey. I do understand the concern the Members have. And let me just say to a large extent it is out of our concern for the full rights of each individual Member that we have come to this point, and we will get back to that business and try to resolve this as quickly as we can.

Mr. GEPHARDT. I thank the gentleman.

The CHAIRMAN. Are there any further amendments to title III.

The Clerk will designate title IV.

The text of title IV is as follows:

TITLES IV AND V

SEC. 401. WASTE TREATMENT SYSTEMS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS.

Section 401 of this Act is amended by adding the following new paragraph:

"(i) CONCENTRATED ANIMAL FEEDING OPERATIONS.--For purposes of this section, waste treatment systems for concentrated animal feeding operations, including lagoons, used to meet the requirements of this Act for concentrated animal feeding operations, are not waters of the United States. An existing technology-related pollutant that uses a natural topographic impoundment or structure on the effective date of this Act, which is not hydrologically connected to any other water of the United States, as a waste treatment system or wastewater retention facility may continue to use that natural topographic feature for waste storage regardless of its size, capacity, or previous use.

SEC. 402. PERMIT REFORM.

(a) DURATION AND REOPENERS.-Section 402(b)(1) (33 U.S.C. 1342(b)(1)) is amended—

(1) in subparagraph (B) by striking "five" and inserting "10"; and by striking "and";

(2) by inserting "and" after the semicolon at the end of subparagraph (B);

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

"(E) may be modified as necessary to address a significant threat to human health and the environment;"

(b) REVIEW OF EFFLUENT LIMITATIONS.-Section 304(d)(1) (33 U.S.C. 1331(d)(1)) is amended to read as follows:

"(d) REVIEW OF EFFLUENT LIMITATIONS.-Any effluent limitation required by subsection (b)(2) shall be reviewed at least every 10 years when the permit is reissued, and, if appropriate, revised.

(c) DISCHARGE LIMIT.-Section 402(b)(1)(A) (33 U.S.C. 1342(b)(1)(A)) is amended by inserting after the semicolon at the end of the following: "except that in no event shall a discharge limit in a permit under this section be set at a level below the lowest level that the pollutant can be reliably quantified on an interlabatory basis for a particular pathogen, as determined by the Administrator using approved analytical methods under section 304(h)."

SEC. 403. REVIEW OF STATE PROGRAMS AND PERMITS.

(a) REVIEW OF STATE PROGRAMS.-Section 402(c) (33 U.S.C. 1342(c)) is amended by inserting before the first sentence the following: "Upon approval of a State program under this section, the Administrator shall review administration of the program by the State once every 3 years."

(b) REVIEW OF STATE PERMITS.-Section 402(d)(1) (33 U.S.C. 1342(d)(1)) is amended—

(1) in the first sentence by striking "as being outside the guidelines and requirements of this Act" and inserting "as presenting a substantial risk to human health and the environment;" and

(2) in the second sentence by striking "and the effluent limitations and all that follows before the period.

(c) COURT PROCEEDINGS TO PROHIBIT INTRODUCTION OF POLLUTANTS INTO TREATMENT WORKS.-Section 402(h)(3) (33 U.S.C. 1342(h)(3)) is amended by inserting after "approved or where" the following: "the discharge involves a significant source of pollutants to the waters of the United States."
(iii) if, at the time the limitation or standard is established, the level of the pollutant in the intake water is 50% or lower than the amount of the pollutant in the receiving waters, taking into account analytical variability; and

(B) if, for conventional pollutants, the constituent level of any such pollutant in the intake water are the same as the constituents of the conventional pollutants in the effluent.

(2) ALLOWANCE FOR INCIDENTAL AMOUNTS.—In determining whether the condition set forth in paragraph (1)(A)(ii) is being met, the Administrator or the State may, as appropriate, make allowance for incidental amounts of intake water from sources other than the receiving waters.

(3) CREDIT FOR NONQUALIFYING POLLUTANTS.—The Administrator shall or a State may provide point sources an appropriate credit for polluting into the receiving waters from sources other than the receiving waters.

(4) MONITORING.—Nothing in this section prevents the Administrator or a State from requiring monitoring of intake water, effluent, or receiving waters to assist in the implementation of this section.

SEC. 405. COMBINED SEWER OVERFLOWS.

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

"(s) COMBINED SEWER OVERFLOWS.—

(1) REQUIREMENT FOR PERMITS.—Each permit issued under subsection (b) for a discharge from a combined storm and sanitary sewer shall conform with the combined sewer overflow control policy developed under section 301(b) of the Clean Water Act.

(2) TERM OF PERMIT.—

(A) COMPLIANCE DEADLINE.—Notwithstanding any compliance schedule under this subsection, the permit issued under paragraph (3) shall provide for a long-term control plan under the control policy referred to in paragraph (1), for a term not to exceed 15 years.

(B) EXTENSION.—Notwithstanding the compliance deadline specified in subparagraph (A), the Administrator or a State with a program approved under subsection (b)(1)(B) may extend the period of compliance beyond the long-term control plan under the control policy referred to in paragraph (1), for a term not to exceed 15 years.

(3) COMPLIANCE DEADLINE.—Notwithstanding any compliance schedule under this subsection, the permit issued under paragraph (3) shall provide for a long-term control plan under the control policy developed under paragraph (1), for a term not to exceed 15 years.

SEC. 408. SANITARY SEWER OVERFLOWS.

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

"(t) SANITARY SEWER OVERFLOWS.—

(1) DEVELOPMENT OF POLICY.—Not later than 2 years after the date of enactment of this subsection, the Administrator, in consultation with State water authorities, shall develop and publish a national control policy for municipal separate sanitary sewer overflows. The national policy shall recognize and address regional and economic factors.

(2) ISSUANCE OF PERMITS.—Each permit issued pursuant to this section for a discharge from a municipal separate sanitary sewer shall conform with the policy developed under paragraph (1).

(3) COMPLIANCE DEADLINE.—Notwithstanding any compliance schedule under this subsection, any permit issued under subsection (b)(1)(B) shall provide for a long-term control plan under the control policy developed under paragraph (1), for a term not to exceed 15 years.

(4) EXTENSION.—Notwithstanding the compliance deadline specified in paragraph (3), the Administrator or a State with a program approved under subsection (b)(1)(B) may extend the period of compliance beyond the long-term control plan under the control policy referred to in paragraph (1), for a term not to exceed 15 years.

(5) EFFECT ON OTHER ACTIONS.—Before the date of publication of the policy under paragraph (1), the Administrator or Attorney General shall not initiate any administrative or judicial action against a municipally owned or operated sanitary sewer system.

(6) SAVINGS CLAUSE.—Any consent decree or court order entered by a United States district court, or administrative order issued by the Administrator, before the date of the enactment of this subsection establishing any deadlines, schedules, or timetables, for the evaluation, design, or construction of treatment works for control or elimination of any discharge from a municipal separate sanitary sewer system shall be modified upon motion or request by any party to such consent decree or court order.

(7) EFFECT ON PREVIOUS ACTIONS.—Before the date of publication of the policy under paragraph (1), any administrative or judicial action initiated or brought for the purpose of requiring a municipal separate sanitary sewer system to be modified upon request or motion by any party to such consent decree or court order shall be referred to paragraph (1) or otherwise achieve the objectives of this subsection."

SEC. 409. ABANDONED MINES.

Section 402 (33 U.S.C. 1342) is further amended by inserting after subsection (h) the following:

"(p) PERMITS FOR REMEDIATING PARTY ON ABANDONED OR INACTIVE MINED LANDS.—

(1) APPLICABILITY.—Subject to this subsection, the requirements of subsection (b) shall apply to any section 301(b) or any permit limitation under section 403, or any subsection of this section (other than this subsection).

(2) APPLICATION FOR A PERMIT.—A remediating party who desires to conduct remediation activities on abandoned or inactive mined lands from which there is or may be a discharge of pollutants to waters of the United States or from which there could be a significant addition of pollutants from nonpoint sources may submit an application to the Administrator. The application shall set out a description of the remediation project, including any persons cooperating with the concerned State or Indian tribe with respect to the remediation project.

(3) REMEDIATION PLAN.—The remediation plan shall include (as appropriate and applicable) the following:

(A) Identification of the remediation party, including any persons cooperating with the concerned State or Indian tribe with respect to the remediation project.

(B) Identification of the abandoned or inactive mined lands addressed by the plan.

(C) Description of the remediation activities on abandoned or inactive mined lands which modifies any otherwise applicable requirements of sections 301(b), 302, and 403, and any subsection of this section (other than this subsection).

(4) EFFECT ON OTHER ACTIONS.—Before the date of publication of the policy under paragraph (1), the Administrator or Attorney General shall not initiate any administrative or judicial action against a remediation project.

(5) EFFECT ON OTHER ACTIONS.—Before the date of publication of the policy under paragraph (1), any administrative or judicial action brought for the purpose of requiring a remediation project to be modified upon request or motion by any party to such consent decree or court order shall be referred to paragraph (1) or otherwise achieve the objectives of this subsection."

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comment by the remediation party, the Administrator determines that the remediation party is not implementing the approved remediation plan in substantial compliance with its terms, the Administrator shall notify the remediation party of the deficiency with a list specifying the concerns of the Administrator; 

(‘‘iv’’ provides that, if the identified concerns are not resolved or a compliance plan approved within 30 days of the notification, the Administrator may take action under section 309 of this Act; 

(v) provide that clauses (iii) and (v) not apply if the action required under section 309 to address violations involving gross negligence (including reckless, willful, or wanton misconduct) or intentional misconduct by the remediation party, or another person; 

(‘‘vi’’ do not require compliance with any limitation issued under sections 301(b), 302, and 403 or any requirement established by the Administrator under any subsection of this section (other than this subsection); and 

(vii) provide for termination of coverage under the permit without the remediation party being subject to enforcement under sections 309 and 505 of this Act for any remaining discharges—

(‘‘I’’ after implementation of the remediation plan; 

(‘‘II’’ if a party obtains a permit to mine the site; or 

(‘‘III’’ upon a demonstration by the remediation party that the surface water quality conditions due to remediation activities at the site, taken as a whole, are equal to or superior to the surface water quality that existed prior to initiation of remediation.

B LIMITATIONS. The Administrator shall only issue a permit under this section, consistent with the provisions of this subsection, to a remediation party for discharges associated with remediation action at abandoned or inactive mined lands if the remediation plan demonstrates with reasonable certainty that the actions will result in an improvement in water quality.

C PUBLIC PARTICIPATION. The Administrator may only issue a permit or modify a permit under this section after complying with subsection (b)(3).

D EFFECT OF FAILURE TO COMPLY WITH PERMIT. Failure to comply with terms of a permit issued pursuant to this subsection shall not be deemed to be a violation of an existing standard or limitation issued under this Act.

E LIMITATIONS ON STATUTORY CONSTRUCTION. This subsection shall not be construed—

(I) to limit or otherwise affect the Administrator’s powers under section 504; or 

(ii) to preclude actions pursuant to section 309 or 505 for any violations of sections 301(a), 302, 402, and 403 that may have existed for the abandoned or inactive mined land prior to initiation of remedial action covered by a permit issued under this subsection, unless such permit covers remediation activities implemented by the permit holder prior to issuance of the permit.

F DEFINITIONS. In this subsection the following definitions apply:

(A) REMEDIATING PARTY. The term ‘remediating party’ means—

(1) the United States (on non-federal lands), a State, a Tribe, or any Indian tribe; or, 

(2) any person acting in cooperation with a person described in clause (1), including a government agency that owns abandoned or inactive mined lands for the purpose of conducting remediation of the mined lands or that is engaging in activities incidental to the ownership of the managed lands.

Such term does not include any person who, before or after issuance of a permit under this section, acts or participated in any mining operation (including exploration) associated with the abandoned or inactive mined lands.

(B) ABANDONED OR INACTIVE MINED LANDS. The term ‘abandoned or inactive mined lands’ means lands that were formerly mined and are not actively mined or in temporary shutdown at the time of submission of the remediation plan and associated documents required under this section.

(C) MINE LANDS. The term ‘mine lands’ means the surface or subsurface of an area where mining operations, including extraction, processing, and beneficiation, have been conducted. Such term includes private ways and roads appurtenant to such area, land excavations, underground mine portals, adits, shafts, and other features under ground workings, such as glory holes and sub-sidiences and features, mining waste, smelting sites and associated with other mined lands, and areas managed by the Federal or State government agency that owns abandoned or inactive mined lands, or in any mining operation (including exploration) associated with the abandoned or inactive mined lands.

(D) LIMITATIONS ON STATUTORY CONSTRUCTION. This subsection shall not be construed—

(1) to limit the Administrator’s powers under sections 309 to address violations involving gross negligence (including reckless, willful, or wanton misconduct) or intentional misconduct by the Administrator or the State (in the case of an approved permit program under section 402) shall not require a new permit under section 402 or modify discharge into any area used for detention, reten-tion, treatment, settling, conveyance, or evapo-ration of wastewater, stormwater, or cooling water unless the area is a water of the United States; 

(2) in the case of any action under section 309 of this Act; 

(3) in the case of any action under section 303(c) of this Act or implementing other requirements of this Act, shall give due consideration to the uses for which such areas were designed and constructed, and not establish standards or other requirements that will impede such uses; 

(E) REGULATION OF OTHER AREAS. With respect to areas, including waste treatment systems, that are not waste treatment systems as defined in this Act and that the Administrator determines are navigable waters under this Act, the Administrator or the State, in establishing standards pursuant to section 303(c) of this Act or implementing other requirements of this Act, shall give due consideration to the uses for which such areas were designed and constructed, and not establish standards or other requirements that will impede such uses.

SEC. 412. THERMAL DISCHARGES.

A municipal utility that before the date of the enactment of this section has been issued a permit under section 402 of the Federal Water Pollution Control Act for discharges into the Upper Greater Miamis River, Ohio, shall not be required under such Act to construct a cooling tower or operate under a thermal management plan unless—

(1) the Administrator or the State of Ohio determines based on scientific evidence that such discharges result in harm to aquatic life; or 

(2) the municipal utility has applied for and been denied a thermal discharge variance under section 316(a) of such Act.

AMENDMENT OFFERED BY MR. RIGGS.

Mr. RIGGS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment numbered 47 offered by Mr. RIGGS: Insert at the appropriate place in title IV the following new section:

"Discharge Volumes. --Section 402(o)(2) (33 U.S.C. 1342(o)(2)) is amended in the first sentence by inserting "the concentration or loading of" after the words "water applicable to"."

Mr. RIGGS. Mr. Chairman, I want to thank the chairman of the full committee, the gentleman from Pennsylvania [Mr. SHUSTER], for his excellent work on the bill.

Mr. Chairman, I hope and believe that my amendment should not be controversial. It reconfirms what the EPA
should already know. Clean water is not itself a pollutant, and should not be regulated as such.

Specifically, Mr. Chairman, my amendment clarifies the anti-backsliding exception in the Clean Water Act under section 402(o). The act now allows a discharge permit to be re-newed, reissued or modified to contain a less stringent effluent limitation applicable to a pollutant in certain circumstances.

The amendment would make clear that as long as other clean water precaution procedures were followed, a discharge permit could be renewed, reissued or modified to contain a less stringent effluent limitation applicable to the concentration or loading of a pollutant.

The effect of the language is that increased volumes of treated wastewater could be discharged into a river or other body of water as long as water quality is not degraded.

The amendment is consistent with the spirit of H.R. 961 in that it gives flexibility while preserving requirements that water quality standards be met.

This amendment is particularly important to a jurisdiction, a portion of which I represent, the city of Santa Rosa in Sonoma County, CA.

Mr. Chairman, the anti-backsliding exception criteria explicitly addresses only the concentration of effluent quality constituents, not the pollutant quantity or wastewater flow. It appears that my amendment would enable the city of Santa Rosa to discharge into a nearby river at a greater than 1 percent rate only with modification of the anti-backsliding provision

Mr. Chairman, this amendment will allow funds to be spent where the environment will benefit the most. Without this proposed language publicly owned wastewater treatment works across the country could be forced by existing regulations to forgo implementation of wastewater reuse projects that could restore wetlands and supply reclaimed water to support local agriculture, the wastewater that would be made available by this amendment and in the case of the city of Santa Rosa, avoid agricultural pumping of water from streams used by salmon and flathead.

For all of these reasons, Mr. Chairman, I urge my colleagues’ approval of this amendment, and again I would hope that my amendment would be accepted out of courtesy and I believe that my amendment is noncontroversial in nature.

Mr. BACHUS. Mr. Chairman, I move to strike the last word, and I rise in support of this amendment. It provides a needed clarification of the 402(o) exemptions, and I would urge a yes vote.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa [Mr. Ricks].

The amendment was agreed to.

The CHAIRMAN. Are there any other amendments to title IV?

The Clerk will designate title V.

The text of title V is as follows:

SEC. 501. CONSULTATION WITH STATES.

Section 501 (33 U.S.C. 1361) is amended by adding at the end the following new subsection: ‘‘(g) CONSULTATION WITH STATES.—

(1) IN GENERAL.—The Administrator shall consult with states and substantially with local governments and their representative organizations, and, to the extent that they participate in the administration of this Act, tribal and local governments, in the Environmental Protection Agency’s decisionmaking, priority setting, policy and guidance development, and implementation under this Act.

(2) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to meetings held to carry out paragraph (1) the Administrator of the Environmental Protection Agency’s decisionmaking, priority setting, policy and guidance development, and implementation under this Act.

(b) W ATER RIGHTS.—Nothing in this Act shall be construed to supersede, abrogate, or otherwise impair any right or authority of a State to allocate quantities of water (including boundary waters). Nothing in this Act shall be implemented, enforced, or construed to allow any officer or agency of a State to utilize directly or indirectly the authorities established under this Act to impose any requirement not imposed by the State which would supersede, abrogate, or otherwise impair rights to the use of water resources allocated under State law, interstate water compact, or Supreme Court decree, or held by the United States for use by a State, its political subdivisions, or its citizens. No water rights arise in the United States or any other person under the provisions of this Act. This subsection shall not be construed as limiting any State’s authority under section 403 of this Act, as excusing any person from obtaining a permit under section 402 or 404 of this Act, or as excusing any obligation to comply with requirements established by a State to implement section 319.’’.

SEC. 506. IMPLEMENTATION OF WATER POLLUTION LAWS WITH RESPECT TO VEGETABLE OIL.

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

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

(A) differentiate between and establish separate classes for—

(i) animal fats; and

(ii) vegetable oils; and

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

(2) CONSIDERATIONS.—In differentiating between the classes of animal fats and vegetable oils referred to in paragraph (1)(A)(i) and the classes of oils referred to in section 512(a)(1) of this Act, the head of the Federal agency shall consider differences in physical, chemical, biological, and other properties, and in the environmental effects of fats, oils, and greases.

(b) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ANIMAL FAT.—The term ‘‘animal fat’’ means each type of animal fat, whether in liquid or solid form, including but not limited to, beef tallow, lard, margarine, shortening, and any other animal tallow, oil, or fat as provided in paragraph 2(a). The term ‘‘animal fat’’ does not include ‘‘vegetable oil,’’ ‘‘lard,’’ ‘‘lard oil,’’ or ‘‘lard and oil.’’

(2) VEGETABLE OIL.—The term ‘‘vegetable oil’’ means each type of vegetable oil, including vegetable oil from a seed, nut, or kernel and any vegetable oil referred to in section 61(a)(1) of this Act, except that the term ‘‘vegetable oil’’ does not include ‘‘lard,’’ ‘‘lard oil,’’ ‘‘lard and oil,’’ ‘‘lard and oil and oil,’’ or ‘‘lard and oil and grease.’’

SEC. 507. NEEDS ESTIMATE.

Section 516(b)(1) (33 U.S.C. 1375(b)(1)) is amended—

(1) in the first sentence by striking ‘‘biennially revised’’ and inserting ‘‘quadrennially revised’’; and

(2) in the second sentence by striking ‘‘February 10 of each odd-numbered year’’ and inserting ‘‘December 31, 1997, and December 31 of every fourth calendar year thereafter’’.

SEC. 508. GENERAL PROGRAM AUTHORIZATIONS.

Section 517 (33 U.S.C. 1376) is amended—

(1) by striking ‘‘and’’ before ‘‘$135,000,000’’;

(2) by adding ‘‘1996, ’’ after ‘‘1995, ’’ and before ‘‘and’’ in paragraph (3); and

(3) by striking ‘‘and’’ before ‘‘$135,000,000’’.

SEC. 509. STATE WATER QUANTITY RIGHTS.

(a) POLICY.—Nothing in section 512(S) (33 U.S.C. 1375(g)) is amended by inserting before the period at the end of the last sentence ‘‘and in accordance with section 510(b) of this Act’’.

(b) STATE AUTHORITY.—Section 510 (33 U.S.C. 1370) is amended—

(1) by striking the section heading and ‘‘SEC. 510. Except’’ and inserting the following:

SEC. 510. STATE AUTHORITY.

(1) IN GENERAL.—Except—

(2) by replacing the period at the end of the last sentence with a semicolon.

SEC. 511. REPORTS TO CONGRESS.

Section 511(b) (33 U.S.C. 1376(b)(1)) is amended—

(1) by striking ‘‘and’’ before ‘‘$135,000,000’’; and

(2) by striking the period at the end of the last sentence and replacing it with a semicolon.

SEC. 512. SOURCES OF FUNDS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is hereby authorized to be appropriated to carry out the provisions of this Act—

(II) $135,000,000 for the fiscal year 1996.

(b) ADMINISTRATION.—There are authorized to be appropriated to carry out the provisions of this Act—

(1) such sums as may be necessary for each of fiscal years 1991 through 2000.

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CONGRESSIONAL RECORD Ð HOUSE
SEC. 509. INDIAN TRIBES.

(a) APPOINTMENT AND SERVICE AGREEMENTS.—Section 518(d) (33 U.S.C. 1377(d)) is amended by adding at the end the following: "(2) In exercising the review and approval provided in this paragraph, the Administrator shall respect the terms of any cooperative agreement that addresses the authority or responsibility of a State or Indian tribe to administer the requirements of this Act within the boundaries of a Federal Indian reservation, so long as that agreement otherwise provides for the adequate administration of this Act."

(b) DISPUTE RESOLUTION.—Section 518 is amended—
(1) by redesignating subsection (h) as subsection (i); and
(2) inserting after subsection (g) the following new subsection:

"(h) DISPUTE RESOLUTION.—The Administrator shall promulgate, in consultation with States and Indian tribes, regulations which provide for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian tribes located on common bodies of water. Such mechanism shall provide, in a manner consistent with the objectives of this Act, that persons who are affected by differing tribal or State water quality permit requirements have standing to utilize the dispute resolution process, and for the explicit consideration of the effects of differing water quality permit requirements on upstream and downstream discharges, economic impacts, and present and historical uses and quality of the waters subject to such standards."

(c) PETITIONS FOR REVIEW.—Section 518 (33 U.S.C. 1377) is amended by inserting after subsection (h) as added by subsection (b) of this section the following:

"(i) DISTRICT COURTS; PETITION FOR REVIEW; STANDARD OF REVIEW.—Notwithstanding the provisions of section 518 of the United States Code, the United States district courts shall have jurisdiction over actions brought to review any determination of the Administrator under section 518. Such an action may be brought by a State or an Indian tribe and shall be filed with the court within the 90-day period beginning on the date of the determination of the Administrator is made. In any such action, the district court shall review the Administrator's determination de novo."

(d) DEFINITIONS.—Section 518(j)(1), as redesignated by subsection (b) of this section, is amended by inserting after the semicolon at the end the following:

"and, in the State of Oklahoma, such term includes lands held in trust by the United States for the benefit of an Indian tribe, so long as that agreement otherwise provides for the adequate administration of this Act."

(e) RESERVATION OF FUNDS.—Section 518(c) (33 U.S.C. 1377(c)) is amended in the first sentence—
(1) by striking "beginning after September 30, 1988,";
(2) by striking "section 205(e)" and inserting "section 504(a)";
(3) by striking "one-half of"; and
(4) by striking "section 207" and inserting "section 504(a)."

SEC. 510. FOOD PROCESSING AND FOOD SAFETY.

Title V (33 U.S.C. 1361-1377) is amended by redesignating section 519 as section 520 and by inserting after section 518 the following:

"SEC. 510A. FOOD PROCESSING AND FOOD SAFETY.

"In developing any efficient guideline under section 304(b), pretreatment standard under section 307(b), or new source performance standard under the exterior boundaries of a Federal In-

processing industry, the Administrator shall consult with and consider the recommendations of the Food and Drug Administration, Department of Agriculture, and Department of Commerce. The recommendations of such depart-
ments and agencies and a description of the Ad-
mnistrator's response shall be made part of the rulemaking record for the development of such guidelines and stand-
ards. The Administrator's response shall include an explanation of the new source performance standard, including a discussion of relative risks, of any depart-
ure from a recommendation by any such depart-
ment or agency."

SEC. 512. AUDIT DISPUTE RESOLUTION.

Title V (33 U.S.C. 1361-1377) is further amended by inserting after section 521, as redesignated by section 510 of this Act, the following:

"SEC. 520A. AUDIT DISPUTE RESOLUTION.

(a) ESTABLISHMENT OF BOARD.—The Administrator shall establish an independent Board of Audit Appeals (hereinafter in this section referred to as the 'Board') in accordance with the requirements of this section.

(b) DUTIES.—The Board shall have the authority to review and decide contested audit de-
terminations related to grant and contract awards under this Act. In carrying out such du-
ties, the Board shall consider only those regula-
tions, guidance, policies, facts, and circum-
cstances in effect at the time of the grant or contract award.

(c) PARTIES ELIGIBLE FOR REVIEW.—The Board shall not reverse project cost eligibil-
determ onations that are supported by a deci-
d document of the Environmental Protection Agency, including plans and specifications approval forms, grant or contract payments, change order approval forms, or similar documents approving project cost
eligibility, except upon showing that such decision was arbitrary, capricious, or an abuse of law in effect at the time of such decision.

(d) MEMBERSHIP.—The Board shall be com-
p of 7 members to be appointed by the Ad-
m inistrator not later than 90 days after the date of the enactment of this section.

(e) TERMS.—Each member shall be appointed for a term of 3 years.

(f) QUALIFICATIONS.—The Administrator shall appoint as members of the Board individ-
uals who are specially qualified to serve on the Board by virtue of their expertise in grant and contracting procedures. The Administrator shall make every effort to ensure that individuals ap-
pointed as members of the Board are free from conflicts of interest in carrying out the duties of the Board.

(g) BASIC PAY AND TRAVEL EXPENSES.—Except as provided in paragraph (2), members shall each be paid at a rate of basic pay, to be determined by the Administrator, for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Board.

(h) PROHIBITION OF COMPENSATION OF FEDERAL EMPLOYEES.—Members of the Board who are full-time employees of the United States may not receive additional pay, allowances, or benefits by reason of their service on the Board.

(i) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(j) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Board, the Admin-
s trator shall provide to the Board the administr-
ive support services necessary for the Board to carry out its duties. The Administrator shall make any determination already conducts a comprehen-
sive review of proposed new hydropower projects when first deciding whether to issue a license and again upon relicensing. That review takes into account the inputs of State and Federal agencies, Indian tribes, and the public. The review also carefully eval-
uates and addresses the potential environ-
mental impacts of each proposed project. Therefore, in the context of hydropower projects under the Commission's jurisdiction, there is no need for the additional, duplicative layer of regulation that the Clean Water Act now creates. This amend-
ment eliminates the duplicative layer of Federal regulation.

Mr. EMERSON. Mr. Chairman, will the gentleman yield?

Mr. EMERSON. I am happy to yield to the chairman of the committee of jurisdiction.

Mr. SHUSTER. Mr. Chairman, I thank the gentleman for yielding. I un-
derstand what he is attempting to ac-
complish here. My judgment is that it does go a little too far, and I am hope-
ful that we might be able to work out a compromise. I believe either Con-
gressman TATE or myself or Congressman LAUGHLIN will have a compromise, and I would be constrained to vigor-
ously support the compromise and hope the gentleman might be able to see his way clear to do that.

Mr. EMERSON. I am glad to be amended, if that is the intent of the chairman.
Mr. RAHALL. Mr. Chairman, we have heard a great deal of talk this year about unfunded mandates, about the rights of the States, about regulatory burdens on local units of government. Well, I would say to my colleagues, this amendment represents the granddaddy of all burdens on the States, of all unfunded mandates on the States, and of all violations of the rights of the States.

What this amendment says is that we will let the Federal Government, in the form of FERC, run roughshod over State water quality determinations during the licensing of hydroelectric power projects.

It is an amendment of convenience. At times, it is convenient to support State privacy. This time, to some, apparently it is not convenient.

And so, what this amendment basically says is that we will allow FERC to shove hydro projects down the throats of the States, and while we’re at it, overturn a Supreme Court decision and disregard the views of 40 State attorneys general.

The simple fact of the matter is that water quality, where the States have primacy under section 401 of the Federal Power Act, and water quantity considerations cannot be separated.

For this reason, the States currently have the right to condition hydroelectric power licenses issued by FERC to protect their bona fide interest in maintaining the water quality of their rivers and streams.

This amendment would do away with that fundamental right of the States. As 40 State attorneys general wrote to the committee leadership recently: “This Congress is actively pursuing a new federalism, seeking to delegate to states authority previously held by the federal government.”

They concluded: “How ironic it would be for this Congress to reverse this policy and strip away longstanding state authority over water quality.”

Mr. Chairman, I urge the defeat of this amendment.

Mr. RAHALL (during the reading). The Clerk read as follows:

Amendment offered by Mr. LAUGHLIN as a substitute for the amendment offered by Mr. EMERSON.

Mr. LAUGHLIN. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. LAUGHLIN as a substitute for the amendment offered by Mr. EMERSON: Page 213, after line 5, insert the following:

SEC. 307. DISPUTE RESOLUTION.

(a) IN GENERAL. —Section 401 of the Federal Water Pollution Control Act does not apply with respect to an issuing entity’s issuance of a hydroelectric project license under Part I of the Federal Power Act if the relevant federal agency makes the determination referred to in subsection (b) in accordance with the mechanism described in subsection (c).

(b) DETERMINATION. —The determination referred to in subsection (a) is a specific determination that a project’s issuance, or requirement under section 401 of the Federal Water Pollution Control Act for such a project is inconsistent with the purposes and requirements of Part I of the Federal Power Act.

(c) MECHANISM. —The dispute resolution mechanism for purposes of subsection (a) shall be established by the relevant federal agency in consultation with the Administrator and the States, for resolving any conflicts or unreasonable consequences resulting from actions taken under section 401 by a State, an interstate water pollution control agency or the Administrator relating to the issuance of a license (or to activities under such license) for a hydroelectric project under Part I of the Federal Power Act. Such mechanism shall require a process whereby: (1) the relevant federal agency, in coordination with the State, the interstate agency or the Administrator (as the case may be) may determine whether any denial, condition or requirement under section 401 of the Federal Water Pollution Control Act relating to the issuance of such license or to activities under such license is consistent with the purposes and requirements of Part I of the Federal Power Act; (2) such denial, condition, or requirement shall be presumed to be consistent with the purposes and requirements of Part I of the Federal Power Act if based on temperature, turbidity or other objective water quality criteria regulating discharges of pollutants; and (3) any denial, condition, or requirement not based on such criteria shall be presumed to be consistent with the purposes and requirements of Part I of the Federal Power Act unless the relevant federal agency, after attempting to resolve any inconsistency, makes a specific determination in accordance with and establishes such determination together with the basis for such determination in the license or other appropriate order.

Mr. LAUGHLIN (during the reading). There was no objection.

Mr. LAUGHLIN. Mr. Chairman, the Laughlin-Tate-Brewster-Bachus-Par ker amendment to the Emerson amendment is a balanced, reasonable amendment to address the ongoing problem involving section 401 of the Clean Water Act and the Federal Energy Regulatory Commission.

This sets up a balanced, fair dispute resolution process. It responds to the conflicts—or at least potential conflicts—between Clean Water Act water quality certifications and FERC hydroelectric licensing decisions.

A recent Supreme Court case has expanded the interpretation and use of section 401.

This amendment does not overturn that case. It does not weaken States rights to protect water quality.

Instead, it sets up a fair mechanism to resolve potential conflicts or unreasonable consequences. It also retains States’ rights to protect water quality—the original intent of the Clean Water Act.

I urge my colleagues to support the amendment.

Mr. BACHUS. Mr. Chairman, I rise in support of the BACHUS substitute amendment. (Mr. BACHUS asked and was given permission to revise and extend his remarks.)

Mr. BACHUS. Mr. Chairman, this amendment deals with hydroelectric power. Hydroelectric power is our largest renewable energy source. Ninety-five percent of our renewable energy in the United States is hydroelectric power. That source of renewable energy is threatened. In 1991, the Supreme Court ruling which the gentleman from Texas mentioned, and it has placed this energy resource in jeopardy. The Supreme Court ruling known as the Tacoma decision expands the role of the State water quality agency beyond traditional water quality determinations, by permitting these agencies to regulate operations of a hydro project, a power previously under the jurisdiction of the Federal Energy Regulatory Commission and Federal natural resource agencies.

Mr. RAHALL. Mr. Chairman, we have heard a great deal of talk this year about unfunded mandates, about the rights of the States, about regulatory burdens on local units of government. Well, I would say to my colleagues, this amendment represents the granddaddy of all burdens on the States, of all unfunded mandates on the States, and of all violations of the rights of the States.

What this amendment says is that we will let the Federal Government, in the form of FERC, run roughshod over State water quality determinations during the licensing of hydroelectric power projects.

It is an amendment of convenience. At times, it is convenient to support State privacy. This time, to some, apparently it is not convenient.

And so, what this amendment basically says is that we will allow FERC to shove hydro projects down the throats of the States, and while we’re at it, overturn a Supreme Court decision and disregard the views of 40 State attorneys general.

The simple fact of the matter is that water quality, where the States have primacy under section 401 of the Federal Power Act, and water quantity considerations cannot be separated.

For this reason, the States currently have the right to condition hydroelectric power licenses issued by FERC to protect their bona fide interest in maintaining the water quality of their rivers and streams.

This amendment would do away with that fundamental right of the States. As 40 State attorneys general wrote to the committee leadership recently: “This Congress is actively pursuing a new federalism, seeking to delegate to states authority previously held by the federal government.”

They concluded: “How ironic it would be for this Congress to reverse this policy and strip away longstanding state authority over water quality.”

Mr. Chairman, I urge the defeat of this amendment.
have some kind of a dispute mechanism being set up, but it seems to me ultimately the decisions will all be made within the Federal Energy Regulatory Commission.

Mr. EMERSON. Mr. Chairman, will the gentleman yield?

Mr. DEFAZIO. I yield to the gentleman from Missouri.

Mr. EMERSON. The object here is to establish a dispute resolution process. That is the intent of the amendment, to avoid duplicative efforts.

Mr. DEFAZIO. Reclaiming my time, who would have the final say in a dispute? I have determined that a hydro project is inconsistent with that State's regulation of its own waters; that is, whether they have a concern regarding drinking water quality, turbidity, fisheries, whatever?

Mr. EMERSON. In an issue involving the jurisdiction of FERC, it would be FERC.

Mr. DEFAZIO. Reclaiming my time then, so the gentleman is preempting States' rights, and in the western States a number of States have opted to operate in parallel with FERC, and now in this case, should a State oppose a project approved by FERC, FERC could overrule the State? Is that correct? I guess it is.

Mr. EMERSON. If the gentleman would yield, no, the States still have their right to protect their water quality. It is when we get into the issues of water quantity that you need an arbitrator above an individual State.

Mr. DEFAZIO. Reclaiming my time, I do not know how in the West, where it does not rain in the summertime and some years we do not have a lot of runoff, we can separate the issues of water quantity and quality. They kind of go together. If we do not have enough water, a lot of times there may be a problem with resident fish, and there may be a problem with other naturally occurring pollutants. We have some mercury contamination that is natural. If we do not have enough water, it reaches dangerous levels.

Mr. EMERSON. If the gentleman would yield, I think the best way to put it is that when a State acts under the Clean Water Act and there is a dispute, you need a higher authority to go to resolve the dispute. So this is a dispute resolution mechanism more than anything else.

Certainly, it would not be my object to preempt States' rights, but there certainly are issue areas where States, where a higher authority needs to be invoked.

Mr. DEFAZIO. Reclaiming my time, is the gentleman familiar with the position of the Western Governors, and have the Western Governors signed off on this? Because they were opposed to the previous amendment.

Mr. EMERSON. We have worked with the Western Governors. No, they have not signed off on it. We have given them every opportunity to be involved, and that is one of the reasons, quite frankly, for which there needs to be a dispute resolution mechanism.
Mr. DeFAZIO. Reclaiming my time, I guess ultimately, I mean I would then conclude, in opposition to the amendment, because I do not want the Federal Energy Regulatory Commission to be the final arbiter of something that concerns the waters of a sovereign western State. You know, we had a conflict in my State between State and Federal. FERC and the State, and the State prevailed because the State demonstrated that the project approved by FERC would have caused the decimation of a fishery. The State had wildlife concerns, and also would have very detrimental effects on a very, very heavily used river in terms of whitewater rafting.

So I am not assured by the idea that these faceless, nameless bureaucrats at FERC are going to be the protectors of the 50 States' sovereign water rights. So I would reluctantly rise in objection to the amendment, as I understand it. I have hardly been given the opportunity to review it.

Mr. EMERSON. If the gentleman would yield, I would like to recognize that quality and quantity are mixed. But let me say to the gentleman that when a State makes a quantity decision that may be in conflict with FERC, there needs to be a dispute resolution process.

Mr. DeFAZIO. Reclaiming my time, my understanding now, in those cases, either it has been decided by the courts, I am not certain, or certainly people have had recourse to the courts, given the conflict between a State agency and a Federal agency. But to have a dispute resolution wherein FERC has the final say, if this were a neutral dispute resolution process with an arbitrator or a mediator or something, someone not part of FERC, I would be more interested and enthusiastic, but to say there will be a dispute resolution and FERC, who disagrees with the State, will get to determine the resolution is going back to the fox guarding the chickenhouse.

Mr. TATE. If the gentleman would yield, if it is strictly a FERC issue, FERC will decide. The problem comes when there is a conflict between FERC and the States.

Mr. DeFAZIO. Again, that is my concern. I would like to see the States have at least equal footing, and if not preeminence, when it comes to this.

Mr. TATE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first of all, I would like to thank the chairman for his efforts on this particular issue, trying to forge a compromise, as well as the gentleman from Texas [Mr. LAUGHLIN] and others who have been working on this particular issue.

Since January 4, we have been trying to make Government more efficient, less bureaucracy, trying to streamline all processes of Government.

The Tacoma case complicates this entire issue. What we are trying to do is bring some common sense back to this, and there are some questions left unanswered by the Supreme Court.

Now, the expanded role granted by the Supreme Court, but we need a balance. We need a reasoned approach.

The current process under FERC looks at environmental concerns, looks at fish and wildlife, looks at economic production, looks at environmental concerns, and there are some questions left.

Mr. DeFAZIO, Mr. Chairman, will the gentleman yield?

Mr. TATE. I yield to the gentleman from Oregon.

Mr. DeFAZIO. Well, again just returning to— as my colleague knows, I think we all strive for consistency. I mean the issue of preempting the State on waters solely within, as my colleague knows, its jurisdiction disturbs me, and I would assume it disturbs the gentleman to give that power to a bunch of bureaucrats. Could the gentleman have the membership of the Federal Energy Regulatory Commission for me?

Mr. TATE. Once again, I cannot name the names of the FERC, but the point to keep in mind, the gentleman from Oregon, is, if we do not make these changes, we are going to have two processes. I mean we have to decide. Eventually, there has to be an answer. Otherwise this becomes a lawyers' dream. We are going to argue between which is right. I am someone who respects States' rights, but ultimately there needs to be a decision. This provides that ultimate decision. Otherwise we are just hanging out there in space waiting for someone to answer. This gives a final answer, and that is what we need.

Mr. DeFAZIO. If the gentleman will yield, in my State we got to a final answer. FERC approved the project, the State disapproved it, and the project would not go forward, and I would say that would be a fair result, but under this amendment FERC would approve it, the State would disapprove it, and FERC would then preempt the State, and I am puzzled that a Western Member would support—

Mr. TATE. Reclaiming my time, that could still occur under this current provision. We are just trying to have some finality to this issue. I see to this, and to move forward with this. The gentleman's scenario would still exist under this particular bill, or actually substitute to the Emerson amendment.

Mr. DICKS. Mr. Chairman, will the gentleman yield?

Mr. TATE. I yield to the gentleman from Washington.

Mr. DICKS. I rise in support of this substitute amendment. This case occurred in—Tacoma case is in my district and it affected a dam up on the Olympic Peninsula in the State of Washington, and I have thought about this at some great length, and in my judgment we have to have some way to resolve this. I say to my colleagues, you can't have the States being able to completely block. I mean that the FERC should consider the States' objections, they should give them due weight, but they are not supposed to be the— they should be as I understand the bill, there is basically you're saying that, unless the FERC can show that it's inconsistent with the Federal Power Act, basically it has to go along with the State objection. It seems to me that it is fine, but to have this—to have these two processes where both of them are kind of State FERC's and a national FERC I think is a big mistake, and I think this is a good compromise. I think it's well-thought-out and very balanced, and I would hope that it will be adopted.

Mr. TATE. Reclaiming my time to agree with the gentleman from the Sixth District of Washington, I say, you are exactly right. The burden of proof is on FERC to prove that it is the problem, and so that's—we are solving the problem. We are getting rid of the duplication, and I commend the gentleman for his support.

Mr. DICKS. I would point out this does mean this is kind of a strong Federal system, but I think in this case it is warranted.

Mr. CHENOWETH. Mr. Chairman, I move to strike the requisite number of words.

As my colleagues know, it is very interesting that in the Northwest we rely about 40 percent on hydropower production. Unfortunately, hydropower production is dependent for its fuel source, and unless there is a reliable quantity of water which could be taken away from a project because of quality concerns, and unless there is a stability in that in the long term over the period of the license, a project can be threatened, and ratepayers ultimately have to pay that cost.

Mr. DeFAZIO. Mr. Chairman, will the gentlewoman yield on that point?

Mrs. CHENOWETH. I yield to the gentleman from Oregon.

Mr. DeFAZIO. Maybe I misunderstood the gentlewoman, but I understood her to
Mr. STOCKMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. BACHUS. Mr. Chairman, will the gentleman yield?

Mr. STOCKMAN. I yield to the gentleman from Alabama.

Mr. BACHUS. Mr. Chairman, I think one unfair aspect of this debate is there has been some suggestion that under this amendment the States and their water quality agencies do not have significant authority under this amendment. I would remind the gentleman from Oregon and anyone that is concerned about this that FERC will still be required to include the State’s position on the need for power for the project, the value of the project to the local and regional economy, as well as the effects on recreation, fish and wildlife, and water quality in deciding whether or not to issue a license, and over the past history of FERC’s regulation, even prior to this amendment which expands the rights of the water quality agencies of the States, FERC has accepted the recommendations of the States in over 90 percent of the cases, and we strengthen that. We strengthen under this amendment the right of the States to make input and to participate.

Mr. DEFAZIO. Mr. Chairman, will the gentleman yield?

Mr. BACHUS. I yield to the gentleman from Oregon.

Mr. DEFAZIO. The qualification I see in this amendment is the qualification of States’ water rights; that is one of the reasons I ran for Congress, but I think that we have to offer to our ratepayers and to the license holders a certain degree of certainty, and I think that this amendment would do that.

Mr. BREWERSTEDT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Lauginh amendment. Mr. Chairman, this amendment resolves very simply a potential problem resulting from the so-called Tacoma decision by the Supreme Court. That decision actually puts the Clean Water Act in direct conflict with the Federal Energy Regulatory Commission under the Federal Power Act. FERC is required to strike the requisite number of words.

Mr. STOCKMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. BACHUS. Mr. Chairman, will the gentleman yield?

Mr. STOCKMAN. I yield to the gentleman from Alabama.

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Mr. SHUSTER. I have a parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. SHUSTER. Mr. Chairman, I was on my feet and did not hear the Chair announce the vote. What was the announcement of the 5-minute vote?

The CHAIRMAN. The announcement of the 5-minute vote was that the nays prevailed. The Chair stands corrected. It was not a 5-minute vote. There was no voice vote.

On the voice vote, the nays prevailed and the amendment was not agreed to.

Mr. SHUSTER. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Those in favor of a recorded vote will indicate by standing.

Mr. MINETA. I have a parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. MINETA. Mr. Chairman, it seems to me Members have left. To now call for a vote—

The CHAIRMAN. The Committee will be in order. Members will suspend.

The gentleman from California [Mr. MINETA] has been recognized by the Chair. The gentleman from California shall proceed.

Mr. MINETA. Mr. Chairman, on the basis of what we have now heard, I ask unanimous consent that the last vote be reconsidered, that the voice vote be reconsidered; that there be a reconsideration of the voice vote.

The CHAIRMAN. A motion to reconsider is not in order.

Mr. SHUSTER. Mr. Chairman—

The CHAIRMAN. The Members will suspend.

By unanimous consent, the Committee may vacate a voice vote, and do it over.

Mr. THOMAS. Mr. Chairman, I ask unanimous consent that the voice vote be vacated.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri [Mr. EMERSON], as amended.

The amendment, as amended, was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. MFUME. Mr. Chairman, I was, unfortunately, required to attend to business in my congressional district in Baltimore this evening and thus forced to miss two record votes. Specifically, I was not present to record my vote on rollcall vote No. 325, the amendment offered by Mr. VISCONTI of Indiana and rollcall vote No. 326, the amendment offered by Mr. LAUGHLIN of Texas to the Emerson of Missouri amendment.

HAD I BEEN HERE I WOULD HAVE Voted "aye" ON ROLLCALL VOTE NO. 325 AND "nay" ON ROLLCALL VOTE NO. 326.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri [Mr. EMERSON], as amended.
LAWS.—If a State provides assistance from its water pollution control revolving fund established in accordance with this title and which serves a population other than this Act under paragraph (1), such assistance shall be treated as having met the requirement of any requirement or any Federal executive order or program of the State which addresses the restoration or protection of publicly or privately owned riparian areas.

LAWS.—Section 602 (33 U.S.C. 1382) is amended by striking "(1) for construction" and all that follows through the period and inserting "to accomplish the purposes of this Act.".

TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 601. GENERAL AUTHORITY FOR CAPITALIZATION FUNDS.

Section 601(a) (33 U.S.C. 1381(a)) is amended—

(i) by striking "before fiscal year 1995"; and

(ii) by striking "201b" and all that follows through "218" and inserting "211".

(b) COMPLIANCE WITH OTHER FEDERAL LAWS.—Section 601(b) (33 U.S.C. 1381(b)) is amended by adding the end the following:

(3) OTHER FEDERAL LAWS.—

(1) Compliance with other Federal laws. Notwithstanding any other provisions of this Act, any State, municipality, intermunicipality, or interstate agency may transfer to a qualified private sector entity all or part of a treatment works that is owned by such agency and for which it received Federal financial assistance under this Act if the transfer price will be distributed, as amounts are received, in the following order:

(i) The unencumbered balance of the proceeds of the loan.

(ii) The unencumbered balance of the amount of all loans made by the State from its revolving loan fund in fiscal year.

(iii) The amount of all interest paid by the State since the revolving loan fund in fiscal year.

(iv) The amount of all interest paid by the State since the revolving loan fund in fiscal year.

(v) The amount of all interest paid by the State since the revolving loan fund in fiscal year.

(vi) The amount of all interest paid by the State since the revolving loan fund in fiscal year.

(vii) The amount of all interest paid by the State since the revolving loan fund in fiscal year.

(viii) The amount of all interest paid by the State since the revolving loan fund in fiscal year.

SEC. 602. CAPITALIZATION GRANT AGREEMENTS.

(a) REQUIREMENTS FOR CONSTRUCTION OF TREATMENT WORKS.—Section 602(b)(6) (33 U.S.C. 1382(b)(6)) is amended—

(1) in subparagraph (A) by inserting "or" at the end of paragraph (1), and by striking "after" and all that follows through "the end of" and inserting ";

(2) in subparagraph (B) by striking "not later than" and all that follows through "20 years" and inserting "at the end of";

(3) in subparagraph (C) by striking "the sum of" and all that follows through "the end of the loan".

(b) COMPLIANCE WITH OTHER FEDERAL LAWS.—Section 602(c) (33 U.S.C. 1382(c)) is amended by adding the end the following section:

(1) in subsection (d) by striking "and" at the end of paragraph (1), and by inserting "or" before the period at the end of the following:

(2) in subparagraph (B) by striking "not later than" and all that follows through "the end of the loan".

(c) TECHNOLOGIES.—Section 602(d) (33 U.S.C. 1382(d)) is amended—

(1) by striking "and" at the end of paragraph (1), and by adding the following as a new paragraph (2):

(2) in subparagraph (B) by striking "after" and all that follows through "the end of the loan".

(d) ADMINISTRATIVE EXPENSES.—Section 602(e) (33 U.S.C. 1382(e)) is amended—

(1) in paragraph (3) by inserting "or" before the period at the end of the following:

(2) in subparagraph (B) by striking "not later than" and all that follows through "the end of the loan".

(e) TECHNICAL AND PLANNING ASSISTANCE FOR SMALL SYSTEMS.—Section 602(f) (33 U.S.C. 1382(f)) is amended—

(1) by striking "and" at the end of paragraph (1), and by adding the end the following paragraph:

(2) in subparagraph (B) by striking "not later than" and all that follows through "the end of the loan".

(3) by striking "and" at the end of paragraph (3), and by adding the following as a new paragraph:

(f) Technical and planning assistance. The State may provide technical and planning assistance in furtherance of the purposes of this Act.

SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.

(a) ACTIVITIES ELIGIBLE FOR ASSISTANCE.—Section 603(c) (33 U.S.C. 1383(c)) is amended to read as follows:

(1) in General. The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance to activities which have as a principal benefit the improvement or protection of water quality to a municipality, intermunicipal agency, interstate agency, State agency, or other person. Such activities may include the following:

(2) Construction of a publicly owned treatment works if the recipient of such assistance is a municipality.

(3) Implementation of lake protection programs and projects under section 314.

(4) Implementation of a management program under section 320.

(5) Implementation of a conservation and management plan under section 320.

(6) Implementation of a watershed management program under section 322.

(7) Acquisition of rights for the restoration or protection of publicly or privately owned riparian areas.

(8) Implementation of measures to improve the efficiency of public water use.

(9) Development and implementation of plans by a public recipient to prevent water pollution.

(10) A acquisition of lands necessary to meet any mitigation requirements related to construction of a publicly owned treatment works.

(11) Fund amounts. The water pollution control revolving fund of a State shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing financial assistance described in paragraph (1). Fees charged by a State to recipients may be invested in the fund for the sole purpose of financing the cost of administration of this title.

(b) LOAN GUARANTEES FOR INNOVATIVE TECHNOLOGY.—Section 603(d)(5) (33 U.S.C. 1383(d)(5)) is amended to read as follows:

(1) in paragraph (5) by striking "similar revolving funds established by municipalities or intermunicipal agencies;" and

(2) by inserting "and developing and implementing innovative technologies." after paragraph (5).

(c) ADMINISTRATIVE EXPENSES.—Section 603(f) (33 U.S.C. 1383(f)) is amended—

(1) by striking "and" at the end of paragraph (1), and by inserting "or" before the period at the end of the following:

(2) in subparagraph (B) by striking "not later than" and all that follows through "the end of the loan".

(d) PLANNING AND ADMINISTRATION FOR SMALL SYSTEMS.—Section 603(g) (33 U.S.C. 1383(g)) is amended by adding the following:

(1) Sale of treatment works. Section 603(h) (33 U.S.C. 1383(h)) is amended—

(2) in paragraph (1) by striking "in the case of" and all that follows through "of a treatment works only if".

(3) in paragraph (2) by striking "in the case of" and all that follows through "of a treatment works only if".

(4) in paragraph (3) by striking "the treatment works are no longer" and all that follows through "times of the loan".

(5) in paragraph (4) by striking "the treatment works are no longer" and all that follows through "times of the loan".

(e) INTEREST RATES.—Section 603(i) (33 U.S.C. 1383(i)) is amended by adding the following:

(1) in subparagraph (A) by striking "and" at the end of paragraph (6), and by adding the following as a new paragraph:

(2) in subparagraph (B) by striking "and" at the end of paragraph (7), and by adding the following as a new paragraph:

(f) Technical and planning assistance. The State may provide technical and planning assistance in furtherance of the purposes of this Act.

SEC. 604. PRIVATE OWNERS AND TREATMENT WORKS.

(a) REVIEW OF CONDITION.—Any requirement imposed by regulation or policy for a showing that the treatment works are no longer needed to serve their original purpose shall not apply.

(b) SELECTION OF BUYER.—A State, municipality, intermunicipality, or interstate agency exercising the authority granted by this subsection shall select a qualified private sector entity on the basis of total net cost and other appropriate criteria and shall utilize such competitive bidding, direct negotiation, or other criteria and procedures as may be required by State law.

(c) TECHNICAL AND PLANNING ASSISTANCE.—The State may provide technical and planning assistance from its water pollution control revolving fund in furtherance of the purposes of this Act.
modify such regulations, policies, and procedures to eliminate any obstacles to the construction, improvement, replacement, operation, and maintenance of such treatment works by qualified private sector entities.

(2) REPORT.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall submit to Congress a report identifying any provisions of law that must be changed in order to eliminate any obstacles referred to in paragraph (1).

(3) DEFINITION.—For purposes of this section, the term ‘qualified private sector entity’ means any nongovernmental individual, group, association, business, partnership, organization, or privately or publicly held corporation that—

(A) has sufficient experience and expertise to discharge the responsibilities related with construction, operation, and maintenance of a treatment works and to satisfy any guarantees that are agreed to in connection with a transfer of treatment works under subsection (k);

(B) has the ability to assure protection against insolvency and interruption of services through contractual and financial guarantees; and

(C) with respect to subsection (k), to the extent consistent with the North American Free Trade Agreement and the General Agreement on Tariffs and Trade—

(i) is majority-owned and controlled by citizens of the United States; and

(ii) does not receive subsidies from a foreign government.

SEC. 604. ALLOTMENT OF FUNDS.

(a) IN GENERAL.—Section 604(a) (33 U.S.C. 1384(a)(2)) of title 33 of the United States Code is amended—

(1) by striking ‘‘title II of this Act’’ and inserting ‘‘this title’’;

(2) by striking the period at the end of paragraph (3) and inserting a semicolon; and

(3) by striking the period at the end of the section and inserting a period.

SEC. 605. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this section $2,500,000,000 for fiscal year 1996; $2,500,000,000 for fiscal year 1997; $2,500,000,000 for fiscal year 1998; $2,500,000,000 for fiscal year 1999; and $2,500,000,000 for fiscal year 2000.

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

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

(1) to persons for carrying out management practices and measures under the State management program established under section 603(d); and

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

(b) APPLICABILITY OF OTHER REQUIREMENTS OF THIS TITLE.—Except to the extent the Administrator, in consultation with the chief executive officers of the States, determines that a provision of this title is not consistent with a provision of this section, the provisions of sections 601 through 606 of this title shall apply to grants made under this section in the same manner and to the same extent as they apply to grants made under section 603 of this title.

(c) APPORTIONMENT OF FUNDS.—Funds made available to carry out this section shall be allotted in accordance with the following table:

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<tr>
<th>State</th>
<th>Percentage of Sums Authorized</th>
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<tbody>
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<tr>
<td>District of Columbia</td>
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We should classify wetlands, but only based on our scientific knowledge. We know that wetlands perform important functions—in flood prevention, water quality, wildlife habitat and other areas. However, the plain fact is that no one has the scientific knowledge to pick and choose which wetlands to regulate on the basis of function.

Each Member of this House faces a straightforward test of whether or not one agrees with the principle of basing our regulatory decisions on sound science.

Any suggestion that the content or timing of the NAS report is politically motivated is outrageous and represents a wholesale rejection of the principle that Congress should utilize professional expertise in making difficult scientific decisions.

The fact is, Members who make such situations are simply disappointed that their ostrich-like efforts to schedule floor consideration of H.R. 961 in advance of the release of this report were unsuccessful.

Mr. COBLE. Mr. Chairman, if you support using sound science in regulatory decisions, you must oppose the provisions of H.R. 961. Anything less is sheer hypocrisy.

Mr. SERRANO. Mr. Chairman, there they go again.

The pattern the Republicans set for the first 200 days was to cut spending and repeal programs intended to help children, the poor, the elderly, legal immigrants, and working families, so they can give tax cuts to the wealthiest Americans at the same time they are balancing the federal budget by 2002.

The first significant piece of legislation for the second hundred days is the Clean Water Amendments of 1995, H.R. 961, known in some circles as the "Dirty Water Act" because the Republicans have chosen to protect polluters rather than the health and well-being of ordinary people.

This bill would roll back two decades of progress in reducing pollution in our lakes, rivers, and coastal areas, and halt further progress. It would let corporate polluters increase pollution, and make downstream water users responsible for removing pollution that should not get into the water in the first place.

There are problems throughout the bill. Perhaps the most widely debated provisions would redefine 80 percent of the nation's wetlands out from under federal protection.

Now, we do have a lot of wetlands in the South Bronx, but we do drink water, and wetlands recharge water supplies and filter harmful substances from our water. We eat fish and seafood, and wetlands provide critical habitat, assuring adequate stocks now and in the future. We enjoy fishing, swimming, and other recreation on and around the water, and wetlands help keep our waters clean. But H.R. 961's wetlands provisions would cost us more while reducing the quality of our water and the safety and quantity of our seafood. We have plenty of reasons to care about wetlands.

Mr. BARTON. Mr. Chairman, is the burden of this bill would place on urban consumers downstream from runoff sources—the agribusinesses, miners, foresters, and developers that would not be required to take even minimal actions to prevent pollution for decades, if ever. In many areas, overall water quality continues to be poor because sources of polluted runoff are not doing their share. Under H.R. 961, low-income urban ratepayers would have to pay more to get clean water, while upstream businesses that could afford to limit pollution would not be required to do so.

In addition, I am deeply distressed by the bill's lack of environmental justice protections for poor people and people of color. Amendments to require water quality testing and reporting in areas where the most vulnerable populations live, work, fish, and swim, and posting of fish advisories to warn subsistence fishers that fish in certain waters are too polluted to be consumed—low-cost and cost-effective measures—have been rejected.

And, Mr. Chairman, these are only a few of the problems I see in this bill. The Clean Water Act is widely regarded as one of our most effective and successful environmental laws. It has produced marked improvements in the health of our people, the quality of life along our waterways and coasts, and the availability of clean water for household use and recreation. But the Republicans, in H.R. 961 reverse these successes and deny us further progress.

Mr. Chairman, I oppose this bill, as do many thoughtful New Yorkers, who have written letters opposing H.R. 961.

Marcia Fowle of the New York City Audubon Society wrote:

`There are few things as important to sustaining life as water. We must not return to the days when swimming and fishing threatened our health.'

Bruce Carpenter of New Rivers United wrote:

`Regardless of amendments, please vote NO on H.R. 961. The quality of our country's waters must not be undermined by polluters and special interests.'

Rav Freidel of Concerned Citizens of Montauk wrote:

`We have tried to find alternative amendments that would make the Clean Water Act clean again. This is the only way to fix it. It is simply a dirty water bill.'

Marcy Benstock of the Aquatic Habitat Project, Clean Air Campaign in New York City wrote:

`H.R. 961 includes so many harmful changes that it cannot be fixed.'

They are right. No amendments adopted in this House can fix this bill and I urge my colleagues to join me in voting against passage of H.R. 961.

Mr. COBLE. Mr. Chairman, the Federal regulation of stormwater in my congressional district has become known simply as the "rain tax."

The city has imposed a new utility tax on all property owners in order to raise $5.5 million annually to offset some of the costs of this unfunded Federal mandate. As my constituents in Greensboro, NC, have become aware of the direct tax resulting from the current Clean Water Act, they have called and written my office to express their outrage over this, a perfect example of Federal overreach. "What will be taxed next?" they ask.

I have a letter from Greensboro's city manager, Bill Carstarphen, in which he supports the stormwater management provisions in H.R. 961. Further, city officials urge the defeat of amendments that could subvert the improved flexibility in H.R. 961 for State and local governments to address stormwater pollution.

Mr. Barton, in your city's environmental director, Elizabeth Treadway, praises the recognition in H.R. 961 that stormwater cannot be considered a point-source pollution problem. These are our community experts speaking to the need for developing this program to the States, with an emphasis on voluntary compliance.

Greensboro was issued its permit in late 1994. The city spent almost $1 million over a 2-year period just to secure the permit. The city was forced to spend this money even though a solution to stormwater pollution under current law is unenforceable. It is multi-source.

The stormwater provisions in H.R. 961 have been criticized as rolling back existing protections and allowing currently treated stormwater to be discharged without treatment. In fact, H.R. 961 does not eliminate the permit under which Greensboro operates its stormwater program. Greensboro and 341 other large cities—and 134,000 industrial facilities—already have stormwater permits. Greensboro would be required to comply with the existing permit until it became subject to voluntary activities, enforceable plans, general permits, and site-specific permits under approved State stormwater management programs described in H.R. 961.

The stormwater provisions of the current Clean Water Act are unworkable. H.R. 961 would replace the current, broken Federal requirements with a new program worked out between local governments and their State. H.R. 961 would recognize city officials' concerns that stormwater varies dramatically by season, by climate, and by each storm. This issue cries out for the application of balance.

I urge my colleagues to reject stormwater amendments designed to perpetuate the status quo.

Mr. BARTON. Mr. Chairman, I support the clean water bill, H.R. 961. Among its many good provisions, which have already been described and extolled, is a commonsense solution to an issue that has unnecessarily burdened cities in my district, as well as many others, regarding separate "Sanitary Systems Overflows" [SSO's].

H.R. 961 instructs the EPA to develop a reasonable, flexible, consistent, and economically feasible approach for controlling discharges from SSO's. It also instructs them to stop, review, and modify enforcement actions for projects required under the old policy.

While overinterpreting the Clean Water Act, the EPA has required cities with SSO systems, like Dallas and Fort Worth in my district, to clean up all overflows. The overflowing question does not prevent city officials with representatives of Dallas and Fort Worth on this
issue, when few others were raising this concern.

I thank the chairman of the Transportation and Infrastructure Committee for his help on this issue and would like to work with him to make some technical and refining changes that are currently being discussed. I strongly support the solution included in this bill and look forward to it becoming law.

Mr. SHUSTER. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. WELLER) having assumed the chair, Mr. MCINNIS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 961) to amend the Federal Water Pollution Control Act, had come to no resolution thereon.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 357

Mr. LAHOOD. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H.R. 357.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 535, THE CORNING NATIONAL FISH HATCHERY CONVEYANCE ACT

Mr. MCINNIS, from the Committee on Rules, submitted a privileged report (Rept. No. 104-114) on the resolution (H. Res. 146) providing for consideration of the bill (H.R. 614) to direct the Secretary of the Interior to convey to the State of Minnesota the New London National Fish Hatchery production facility, which was referred to the House Calendar and ordered to be printed.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1500

Ms. PELOSI. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H.R. 1500.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 535, THE CORNING NATIONAL FISH HATCHERY CONVEYANCE ACT

Mr. MCINNIS, from the Committee on Rules, submitted a privileged report (Rept. No. 104-117) on the resolution (H. Res. 144) providing for consideration of the bill (H.R. 535) to direct the Secretary of the Interior to convey the Corning National Fish Hatchery to the State of Arkansas, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 584, CONVEYANCE OF THE FAIRPORT NATIONAL FISH HATCHERY TO THE STATE OF IOWA

Mr. MCINNIS, from the Committee on Rules, submitted a privileged report (Rept. No. 104-110) on the resolution (H. Res. 144) providing for consideration of the bill (H.R. 584) to direct the Secretary of the Interior to convey a fish hatchery to the State of Iowa, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 614, THE NEW LONDON NATIONAL FISH HATCHERY CONVEYANCE ACT

Mr. MCINNIS, from the Committee on Rules, submitted a privileged report (Rept. No. 104-118) on the resolution (H. Res. 146) providing for consideration of the bill (H.R. 614) to direct the Secretary of the Interior to convey to the State of Minnesota the New London National Fish Hatchery production facility, which was referred to the House Calendar and ordered to be printed.

PERMISSION FOR CERTAIN COMMITTEES TO SIT TOMORROW, FRIDAY, MAY 12, 1995 DURING 5-MINUTE RULE

Mr. HAYWORTH. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the 5-minute rule: the Committee on Banking and Financial Services; the Committee on Commerce; the Committee on Economic and Educational Opportunities; the Committee on International Relations; and the Committee on Veterans Affairs.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

Mr. WATT of North Carolina. Mr. Speaker, reserving the right to object, I am instructed by the leadership that these committees have been consulted, and it is proper for them to meet tomorrow.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1143, H.R. 1144, AND H.R. 1145

Mr. FOX of Pennsylvania. Mr. Speaker, I ask unanimous consent that Mr. BRYANT of Texas be removed from the list of cosponsors of the following bills introduced by myself: H.R. 1143, H.R. 1144, and H.R. 1145.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker’s announced policy of January 4, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from South Carolina [Mr. GRAHAM] is recognized for 5 minutes.

[Mr. GRAHAM addressed the House. His remarks will appear hereafter in the Extension of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 5 minutes.

[Mr. OWENS addressed the House. His remarks will appear hereafter in the Extension of Remarks.]

NATIONAL SPACEPORT ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California [Mrs. SEASTRAND] is recognized for 5 minutes.

Mrs. SEASTRAND. Mr. Speaker, tomorrow I will formally introduce the National Spaceport Act, but today, I would like to take a few minutes to discuss why I believe this is a critical and important step forward for American space policy as we prepare for the 21st century.

America has always been a world leader in space development, exploration, technology, and most recently commercialization. Our Nation has always understood the importance of space and has exercised bipartisan cooperation when it came to advancing space issues. This bipartisan cooperation has come from every corner of the political spectrum because of a universal recognition that space is an area of national unity and importance. I recently saw this bipartisan cooperation first hand during the deliberations over the California Spaceport and its 25-year lease with the Air Force.

We are now into the next frontier of space and that is the growing commercial arena. Commercial space was once an area dominated by the United States. However, over the past few years, we have relinquished our leadership position and stood by as other nations have stepped in and vigorously embraced the vast opportunities presented by this market.

Today, a European consortium controls over 60 percent of the commercial launch market. In addition, many other nations including China, Russia, Japan, India, Canada, and Australia are becoming stronger and stronger competitors. Most have the benefit of big and seemingly unlimited government subsidies. For example, earlier this year, the Japanese government announced a 5.1 percent increase in their overall space budget. The Russians have also approved a substantial increase in 1995 funding while the Indian Government increased their funding for