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H. R. 2727

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

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 1993

Mr. PALLONE (for himself, Mr. DEFazio, Mr. GILCHREST, Mr. JACOBS, Mrs. MORELLA, Mr. KILDEE, and Ms. BYRNE) introduced the following bill; which was referred jointly to the Committees on Public Works and Transportation and Merchant Marine and Fisheries

MARCH 23, 1994

Additional sponsors: Mr. DELLUMS, Mr. YATES, Mr. MACHTLEY, Mr. SHAYS, Mr. JOHNSTON of Florida, Mr. KREIDLER, Mr. BONIOR, Mr. BEILEN-SON, Mr. TORRES, Mr. ANDREWS of New Jersey, Mr. BERMAN, Mr. STARK, Mr. EVANS, Mr. CLAY, Mr. LEWIS of Georgia, Ms. NORTON, Mr. TOWNS, Mr. REYNOLDS, Mr. SANDERS, Mr. SMITH of New Jersey, Ms. DELAURO, Mr. GUTIERREZ, Mr. DIXON, Mr. VENTO, Ms. PELOSI, Ms. ESHOO, Mr. CARDIN, Mr. ANDREWS of Maine, Ms. WOOLSEY, Ms. ROY-BAL-ALLARD, Mr. RICHARDSON, Mr. MARTINEZ, Mr. WYNN, and Mr. McDERMOTT

A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Clean Water Enforce-
3 ment and Compliance Improvement Amendments Act of
4 1993”.

5 **SEC. 2. FINDINGS.**

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

7 (1) a significant number of persons who have
8 been issued permits under section 402 of the Fed-
9 eral Water Pollution Control Act are in violation of
10 such permits;

11 (2) current enforcement programs of the Ad-
12 ministrator of the Environmental Protection Agency
13 and the States fail to address violations of such per-
14 mits in a timely and effective manner;

15 (3) often violations of such permits continue for
16 a considerable period of time, yielding significant
17 economic benefits for the violator and thus penaliz-
18 ing similar facilities which act lawfully;

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

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

1 (6) actions of private citizens have been effective in enforcing such permits and directing funds to
2 environmental mitigation projects with \$9,000,000
3 in penalties and interest having been recovered and
4 deposited with the Treasury of the United States
5 over the last 4 fiscal years.

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

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

23 “(i) FINDING WITH RESPECT TO CITIZEN SUITS.—
24 Congress finds that citizen suits are a valuable means of
25 enforcement of this Act and urges the Administrator to

1 take actions to encourage such suits, including providing
2 information concerning violators to citizen groups to assist
3 them in bringing suits, providing expert witnesses and
4 other evidence with respect to such suits, and filing amicus
5 curiae briefs on important issues related to such suits.”.

6 **SEC. 3. VIOLATIONS OF REQUIREMENTS OF LOCAL CON-**
7 **TROL AUTHORITIES.**

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

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

18 **SEC. 4. INSPECTIONS, MONITORING, AND PROVIDING IN-**
19 **FORMATION.**

20 (a) APPLICABILITY OF REQUIREMENTS.—Section
21 308(a) of the Federal Water Pollution Control Act (33
22 U.S.C. 1318(a)) is amended by striking “the owner or op-
23 erator of any point source” and inserting “a person sub-
24 ject to a requirement of this Act”.

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

3 (1) by inserting “(including information con-
4 tained in the Permit Compliance System of the En-
5 vironmental Protection Agency)” after “obtained
6 under this section”;

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

8 (3) by inserting “by computer telecommuni-
9 cation and other means” after “public” the first
10 place it appears.

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

13 “(e) PUBLIC INFORMATION.—

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

1 authorities, post and maintain a clearly visible sign
2 which—

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

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

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

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

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

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

1 by the treatment works over the preceding 12-
2 month period.

3 “(3) REGULATIONS.—

4 “(A) ISSUANCE.—The Administrator—

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

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

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

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

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

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

23 “(iv) uniform requirements for deter-
24 mining the nature and extent of fish and

1 shellfish bans, advisories, and consumption
2 restrictions which—

3 “(I) address cancer and
4 noncancer human health risks;

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

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

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

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

1 “(VI) evaluate assessments of
2 health risks of contaminated fish and
3 shellfish that are used in pollution
4 control programs developed by the Ad-
5 ministrators under this Act.”.

6 (d) STATE REPORTS.—Section 305(b)(1) of such Act
7 (33 U.S.C. 1315(b)(1)) is amended—

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

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

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

13 “(F) a list identifying bodies of water for
14 which signs were posted under section
15 308(e)(1) in the preceding year.”.

16 **SEC. 5. CIVIL PENALTIES.**

17 (a) ENFORCEMENT OF LOCAL PRETREATMENT RE-
18 QUIREMENTS.—

19 (1) COMPLIANCE ORDERS.—

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

1 pretreatment program approved under section
2 402(a)(3) or 402(b)(8) of this Act,”.

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

10 (2) CRIMINAL PENALTIES.—Section
11 309(c)(3)(A) of such Act is amended by inserting
12 after “Army or by a State,” the following: “or know-
13 ingly violates any requirement imposed in a
14 pretreatment program approved under section
15 402(a)(3) or 402(b)(8) of this Act,”.

16 (3) ADMINISTRATIVE PENALTIES.—Section
17 309(g)(1)(A) of such Act is amended by inserting
18 after “404 by a State,” the following: “or has vio-
19 lated any requirement imposed in a pretreatment
20 program approved under section 402(a)(3) or
21 402(b)(8) of this Act or an order issued by the Ad-
22 ministrator under subsection (a) of this section,”.

23 (b) TREATMENT OF SINGLE OPERATIONAL UP-
24 SETS.—

1 (1) CRIMINAL PENALTIES.—Section 309(c) of
2 such Act is amended by striking paragraph (5) and
3 redesignating paragraphs (6) and (7) as paragraphs
4 (5) and (6), respectively.

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

7 (3) ADMINISTRATIVE PENALTIES.—Section
8 309(g)(3) of such Act is amended by striking the
9 last sentence.

10 (c) USE OF CIVIL PENALTIES FOR MITIGATION
11 PROJECTS.—

12 (1) IN GENERAL.—Section 309(d) of such Act
13 is amended by inserting after the second sentence
14 the following: “The court may, in the court’s discre-
15 tion, order that a civil penalty be used for carrying
16 out mitigation projects which are consistent with the
17 purposes of this Act and which enhance the public
18 health or environment.”.

19 (2) CONFORMING AMENDMENT.—Section
20 505(a) of such Act (33 U.S.C. 1365(a)) is amended
21 by inserting before the period at the end of the last
22 sentence the following: “, including ordering the use
23 of a civil penalty for carrying out mitigation projects
24 in accordance with such section 309(d)”.

25 (d) DETERMINATION OF AMOUNT OF PENALTIES.—

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

8 (2) ADMINISTRATIVE PENALTIES.—Section
9 309(g)(3) of such Act is amended—

10 (A) by striking “or savings”; or

11 (B) by inserting “the amount of any pen-
12 alty previously imposed on the violator by a
13 court or administrative agency for the same vio-
14 lation or violations,” after “resulting from the
15 violation,”.

16 (e) LIMITATION ON DEFENSES.—Section 309(g)(1)
17 of such Act is amended by adding at the end the following:
18 “In a proceeding to assess or review a penalty under this
19 subsection, the adequacy of consultation between the Ad-
20 ministrator or the Secretary, as the case may be, and the
21 State shall not be a defense to assessment or enforcement
22 of such penalty.”.

23 (f) AMOUNTS OF ADMINISTRATIVE CIVIL PEN-
24 ALTIES.—

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

3 “(2) AMOUNT OF PENALTIES; NOTICE; HEAR-
4 ING.—

5 “(A) MAXIMUM AMOUNT OF PENALTIES.—

6 The amount of a civil penalty under paragraph
7 (1) may not exceed \$25,000 per violation per
8 day for each day during which the violation
9 continues.

10 “(B) WRITTEN NOTICE.—Before issuing

11 an order assessing a civil penalty under this
12 subsection, the Administrator or the Secretary,
13 as the case may be, shall give to the person to
14 be assessed the penalty written notice of the
15 Administrator’s or Secretary’s proposal to issue
16 the order and the opportunity to request, within
17 30 days of the date the notice is received by
18 such person, a hearing on the proposed order.

19 “(C) HEARINGS NOT ON THE RECORD.—If

20 the proposed penalty does not exceed \$25,000,
21 the hearing shall not be subject to section 554
22 or 556 of title 5, United States Code, but shall
23 provide a reasonable opportunity to be heard
24 and to present evidence.

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

8 (2) CONFORMING AMENDMENTS.—Section
9 309(g) of such Act is amended—

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

12 (B) in the second sentence of paragraph
13 (4)(C) by striking “(2)(A) in the case of a class
14 I civil penalty and paragraph (2)(B) in the case
15 of a class II civil penalty” and inserting “(2)”;
16 and

17 (C) in the first sentence of paragraph (8)
18 by striking “assessment—” and all that follows
19 through “by filing” and inserting “assessment
20 in the United States District Court for the Dis-
21 trict of Columbia or in the district in which the
22 violation is alleged to have occurred by filing”.

23 (g) STATE ENFORCEMENT ACTIONS AS BAR TO FED-
24 ERAL ENFORCEMENT ACTIONS.—Section 309(g)(6)(A) of
25 such Act is amended—

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

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

4 (3) in clause (iii)—

5 (A) by striking “, the Secretary, or the
6 State” and inserting “or the Secretary”; and

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

9 (h) RECOVERY OF ECONOMIC BENEFIT.—Section
10 309 of such Act is amended by adding at the end the
11 following:

12 “(h) RECOVERY OF ECONOMIC BENEFIT.—

13 “(1) GENERAL RULE.—Notwithstanding any
14 other provision of this section, any civil penalty as-
15 sessed and collected under this section must be in an
16 amount which is not less than the amount of the
17 economic benefit (if any) resulting from the violation
18 for which the penalty is assessed.

19 “(2) REGULATIONS.—Not later than 2 years
20 after the date of the enactment of this subsection,
21 the Administrator shall issue regulations establishing
22 a methodology for calculating the economic benefits
23 or savings resulting from violations of this Act.
24 Pending issuance of such regulations, this subsection
25 shall be in effect and economic benefits shall be cal-

1 culated for purposes of paragraph (1) on a case-by-
2 case basis.”.

3 (i) LIMITATION ON COMPROMISES.—Such section
4 309 is further amended by adding at the end the following:

5 “(i) LIMITATION ON COMPROMISES OF CIVIL PEN-
6 ALTIES.—Notwithstanding any other provision of this sec-
7 tion, the amount of a civil penalty assessed under this sec-
8 tion may not be compromised below the amount deter-
9 mined by adding—

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

12 “(2) 50 percent of the difference between the
13 amount of the civil penalty assessed and such mini-
14 mum amount.”.

15 (j) MINIMUM AMOUNT FOR SERIOUS VIOLATIONS.—
16 Such section 309 is further amended by adding at the end
17 the following:

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

20 “(1) SERIOUS VIOLATIONS.—Notwithstanding
21 any other provision of this section (other than para-
22 graph (2)), the minimum civil penalty which shall be
23 assessed and collected under this section from a per-
24 son—

1 “(A) for a discharge from a point source of
2 a hazardous pollutant which exceeds or other-
3 wise violates any applicable effluent limitation
4 established by or under this Act by 20 percent
5 or more, or

6 “(B) for a discharge from a point source
7 of a pollutant (other than a hazardous pollut-
8 ant) which exceeds or otherwise violates any ap-
9 plicable effluent limitation established by or
10 under this Act by 40 percent or more,

11 shall be \$1,000 for the first such violation in a 180-
12 day period.

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

17 “(A) for the second or more discharge in
18 a 180-day period from a point source of a haz-
19 ardous pollutant which exceeds or otherwise vio-
20 lates any applicable effluent limitation estab-
21 lished by or under this Act by 20 percent or
22 more,

23 “(B) for the second or more discharge in
24 a 180-day period from a point source of a pol-
25 lutant (other than a hazardous pollutant) which

1 exceeds or otherwise violates any applicable ef-
2 fluent limitation established by or under this
3 Act by 40 percent or more,

4 “(C) for the fourth or more discharge in a
5 180-day period from a point source of any pol-
6 lutant which exceeds or otherwise violates the
7 same effluent limitation, or

8 “(D) for not filing in a 180-day period 2
9 or more reports in accordance with section
10 402(r)(1),

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

12 “(3) MANDATORY INSPECTIONS FOR SIGNIFI-
13 CANT NONCOMPLIERS.—The Administrator shall
14 identify any person described in paragraph (2) as a
15 significant noncomplier and shall conduct an inspec-
16 tion described in section 402(q) of this Act of the fa-
17 cility at which the violations were committed. Such
18 inspections shall be conducted at least once in the
19 180-day period following the date of the most recent
20 violation which resulted in such person being identi-
21 fied as a significant noncomplier.

22 “(4) ANNUAL REPORTING.—The Administrator
23 shall transmit to Congress and to the Governors of
24 the States, and shall publish in the Federal Register,
25 on an annual basis a list of all persons identified as

1 significant noncompliers under paragraph (3) in the
2 preceding calendar year and the violations which re-
3 sulted in such classifications.

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

8 (k) STATE PROGRAM.—Section 402(b)(7) of such Act
9 (33 U.S.C. 1342(b)(7)) is amended to read as follows:

10 “(7) To abate violations of the permit or the
11 permit program which shall include, beginning on
12 the last day of the 2-year period beginning on the
13 date of the enactment of the Clean Water Compli-
14 ance and Enforcement Improvement Amendments
15 Act of 1993, a penalty program comparable to the
16 Federal penalty program under section 309 of this
17 Act and which shall include at a minimum criminal,
18 civil, and civil administrative penalties, and may in-
19 clude other ways and means of enforcement, which
20 the State demonstrates to the satisfaction of the Ad-
21 ministrators are equally effective as the Federal pen-
22 alty program;”.

23 (l) FEDERAL PROCUREMENT COMPLIANCE INCEN-
24 TIVE.—Section 508(a) of such Act (33 U.S.C. 1368(a))

1 is amended by inserting after the second comma “or who
2 is identified under section 309(j)(3) of this Act,”.

3 **SEC. 6. NATIONAL POLLUTANT DISCHARGE ELIMINATION**
4 **PERMITS.**

5 (a) WITHDRAWAL OF STATE PROGRAM APPROVAL.—
6 Section 402(b) of the Federal Water Pollution Control Act
7 (33 U.S.C. 1342(b)) is amended by striking “unless he
8 determines that adequate authority does not exist:” and
9 inserting the following: “only when he determines that
10 adequate authority exists and shall withdraw program ap-
11 proval whenever he determines that adequate authority no
12 longer exists:”.

13 (b) JUDICIAL REVIEW OF RULINGS ON APPLICA-
14 TIONS FOR STATE PERMITS.—Section 402(b)(3) of such
15 Act is amended by inserting “and to ensure that any inter-
16 ested person who participated in the public comment proc-
17 ess and any other person who could obtain judicial review
18 of that action under any other applicable law has the right
19 to judicial review of such ruling” before the semicolon at
20 the end.

21 (c) INSPECTIONS FOR MAJOR INDUSTRIAL AND MU-
22 NICIPAL DISCHARGERS.—Section 402(b) of such Act is
23 amended—

24 (1) by striking “and” at the end of paragraph
25 (8);

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

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

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

10 (d) MONTHLY REPORTS FOR SIGNIFICANT INDUS-
11 TRIAL USERS OF POTWs.—Section 402(b) of such Act
12 is further amended by adding at the end the following:

13 “(11) To ensure that any permit for a dis-
14 charge from a publicly owned treatment works in the
15 State includes conditions under which the treatment
16 works will require any significant industrial user of
17 the treatment works, as defined by the Adminis-
18 trator by regulation, to prepare and submit to the
19 Administrator, the State, and the treatment works a
20 monthly discharge monitoring report as a condition
21 to using the treatment works;”.

22 (e) PERMITS REQUIRED FOR INTRODUCTION OF
23 POLLUTANTS INTO POTWs.—Section 402(b) of such Act
24 is further amended by adding at the end the following:

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

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

12 “(13) To ensure that the State will grant to
13 publicly owned treatment works in the State, not
14 later than 3 years after the date of the enactment
15 of this paragraph, authority, power, and responsibil-
16 ity to conduct inspections under subsection (q) of
17 this section and to assess and collect civil penalties
18 and civil administrative penalties under paragraph
19 (7) of this subsection.”.

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

22 “(q) INSPECTION.—

23 “(1) GENERAL RULE.—Each permit for a dis-
24 charge into the navigable waters or introduction of
25 pollutants into a publicly owned treatment works is-

1 sued under this section shall include conditions
2 under which the effluent being discharged will be
3 subject to random inspections in accordance with
4 this subsection by the Administrator or the State, in
5 the case of a State permit program under this
6 section.

7 “(2) MINIMUM STANDARDS.—The Adminis-
8 trator shall establish minimum standards for inspec-
9 tions under this subsection. Such standards shall re-
10 quire, at a minimum, the following:

11 “(A) An annual representative sampling by
12 the Administrator or the State, in the case of
13 a State permit program under this section, of
14 the effluent being discharged; except that if the
15 discharge is not from a major industrial or mu-
16 nicipal facility such sampling shall be conducted
17 at least once every 3 years.

18 “(B) An analysis of all samples collected
19 under subparagraph (A) by a Federal or State
20 owned and operated laboratory or a State ap-
21 proved laboratory, other than one that is being
22 used by the permittee or that is directly or indi-
23 rectly owned, operated, or managed by the
24 permittee.

1 “(C) An evaluation of the maintenance
2 record of any treatment equipment of the
3 permittee.

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

6 “(E) A random check of discharge mon-
7 itoring reports of the permittee for each 12-
8 month period for the purpose of determining
9 whether or not such reports are consistent with
10 the applicable analyses conducted under sub-
11 paragraph (B).

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

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

16 “(r) REPORTING.—

17 “(1) GENERAL RULE.—Each person holding a
18 permit issued under this section which is determined
19 by the Administrator to be a major industrial or mu-
20 nicipal discharger of pollutants into the navigable
21 waters shall prepare and submit to the Adminis-
22 trator a monthly discharge monitoring report. Any
23 other person holding a permit issued under this sec-
24 tion shall prepare and submit to the Administrator
25 quarterly discharge monitoring reports or more fre-

1 quent discharge monitoring reports if the Adminis-
2 trator requires. Such reports shall contain, at a min-
3 imum, such information as the Administrator shall
4 require by regulation.

5 “(2) REPORTING OF HAZARDOUS DIS-
6 CHARGES.—

7 “(A) GENERAL RULE.—If a discharge
8 from a point source for which a permit is issued
9 under this section exceeds an effluent limitation
10 contained in such permit which is based on an
11 acute water quality standard or any other dis-
12 charge which may cause an exceedance of an
13 acute water quality standard or otherwise is
14 likely to cause injury to persons or damage to
15 the environment or to pose a threat to human
16 health and the environment, the person holding
17 such permit shall notify the Administrator, in
18 writing, of such discharge not later than 2
19 hours after the later of the time at which such
20 discharge commenced or the time at which the
21 permittee knew or had reason to know of such
22 discharge.

23 “(B) SPECIAL RULE FOR HAZARDOUS POL-
24 LUTANTS.—If a discharge described in subpara-
25 graph (A) is of a hazardous pollutant (as de-

1 fined in section 309(j) of this Act), the person
2 holding such permit shall provide the Adminis-
3 trator with such additional information on the
4 discharge as may be required by the Adminis-
5 trator. Such additional information shall be
6 provided to the Administrator within 24 hours
7 after the later of the time at which such dis-
8 charge commenced or the time at which the
9 permittee became aware of such discharge.
10 Such additional information shall include, at a
11 minimum, an estimate of the danger posed by
12 the discharge to the environment, whether the
13 discharge is continuing, and the measures taken
14 or being taken (i) to remediate the problem
15 caused by the discharge and any damage to the
16 environment, and (ii) to avoid a repetition of
17 the discharge.

18 “(3) SIGNATURE.—All reports filed under para-
19 graph (1) must be signed by the highest ranking of-
20 ficial having day-to-day managerial and operational
21 responsibility for the facility at which the discharge
22 occurs or, in the absence of such person, by another
23 responsible high ranking official at such facility.
24 Such highest ranking official shall be responsible for
25 the accuracy of all information contained in such re-

1 ports; except that such highest ranking official may
2 file with the Administrator amendments to any such
3 report if the report was signed in the absence of the
4 highest ranking official by another high ranking offi-
5 cial and if such amendments are filed within 7 days
6 of the return of the highest ranking official.”.

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

10 “(s) SIGNIFICANT NONCOMPLIERS.—No permit may
11 be issued under this section to any person (other than a
12 publicly owned treatment works) identified under section
13 309(j)(3) of this Act or to any other person owned or con-
14 trolled by the identified person, owning or controlling the
15 identified person, or under common control with the iden-
16 tified person, until the Administrator or the State or
17 States in which the violation or violations occur deter-
18 mines that the condition or conditions giving rise to such
19 violation or violations have been corrected. No permit ap-
20 plication submitted after the date of the enactment of this
21 subsection may be approved unless the application in-
22 cludes a list of all violations of this Act by a person identi-
23 fied under section 309(j) of this Act during the 3-year pe-
24 riod preceding the date of submission of the application

1 and evidence indicating whether the underlying cause of
2 each such violation has been corrected.”.

3 (j) APPLICABILITY.—The amendments made by this
4 section shall apply to permits issued before, on, or after
5 the date of the enactment of this Act; except that—

6 (1) with respect to permits issued before such
7 date of enactment to a major industrial or municipal
8 discharger, such amendments shall take effect on the
9 last day of the 1-year period beginning on such date
10 of enactment; and

11 (2) with respect to all other permits issued be-
12 fore such date of enactment, such amendments shall
13 take effect on the last day of the 2-year period be-
14 ginning on such date of enactment.

15 **SEC. 7. EXPIRED STATE PERMITS.**

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

19 “(5) EXPIRED STATE PERMITS.—In any case in
20 which—

21 “(A) a permit issued by a State for a dis-
22 charge has expired,

23 “(B) the permittee has submitted an appli-
24 cation to the State for a new permit for the dis-
25 charge, and

1 “(C) the State has not acted on the appli-
2 cation before the last day of the 18-month pe-
3 riod beginning on the date the permit expired,
4 the Administrator may issue a permit for the dis-
5 charge under subsection (a).”.

6 **SEC. 8. COMPLIANCE SCHEDULE.**

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

14 **SEC. 9. EMERGENCY POWERS.**

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

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

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

1 public health or welfare or the environment and commence
2 a suit (or cause it to be commenced) in the United States
3 district court for the district where the discharge or threat
4 occurs. Such court may grant such relief to abate the
5 threat and to protect against the endangerment as the
6 public interest and the equities require, enforce, and ad-
7 judge penalties for disobedience to orders of the Adminis-
8 trator issued under this section, and grant other relief ac-
9 cording to the public interest and the equities of the case.

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

16 **SEC. 10. CITIZEN SUITS.**

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

20 (1) in subsection (a)(1) by inserting “to have
21 violated or” after “who is alleged”;

22 (2) in subsection (b)(1)(A)(ii) by striking “oc-
23 curs” and inserting “has occurred or is occurring”;
24 and

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

3 (b) TIME LIMIT.—Section 505(b)(1)(A) of such Act
4 is amended by striking “60 days” and inserting “30
5 days”.

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

8 (1) in paragraph (1)(B)—

9 (A) by striking “, or a State”; and

10 (B) by striking “right.” and inserting
11 “right and may obtain costs of litigation under
12 subsection (d), or”; and

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

1 the action by the Administrator or a State meets the
2 requirements of section 309(g)(6) of this Act.”.

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

9 (e) PRETREATMENT REQUIREMENTS.—Section
10 505(f)(4) of such Act is amended by striking “or
11 pretreatment standards” and inserting “or pretreatment
12 standard or requirement described in section 307(d)”.

13 (f) EFFLUENT STANDARD DEFINITION.—Section
14 505(f)(6) of such Act is amended by inserting “narrative
15 or mathematical” before “condition”.

16 (g) DEFINITION OF CITIZEN.—Section 505(g) of
17 such Act is amended to read as follows:

18 “(g) CITIZEN DEFINED.—For purposes of this sec-
19 tion, the term ‘citizen’ means a person or persons having
20 an interest (including a recreational, aesthetic, environ-
21 mental, health, or economic interest) which is, has been,
22 or may be adversely affected and includes a person who
23 uses or enjoys the waters into which the discharge flows
24 (either directly or through a publicly owned treatment
25 works), who uses or enjoys aquatic resources or nearby

1 lands associated with the waters, or who would use or
2 enjoy the waters, aquatic resources, or nearby lands if they
3 were less polluted.”.

4 (h) OFFERS OF JUDGMENT.—Section 505 of such
5 Act is further amended by adding at the end the following:

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

10 **SEC. 11. ISSUANCE OF SUBPOENAS.**

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

16 **SEC. 12. JUDICIAL REVIEW OF EPA ACTIONS.**

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

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

23 (2) by inserting after the comma at the end of
24 clause (E) “including a decision not to include any
25 pollutant in such effluent limitation or other limita-

1 tion if the Administrator has or is made aware of in-
2 formation indicating that such pollutant is present
3 in any discharge subject to such limitation,”; and

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

12 **SEC. 13. NATIONAL CLEAN WATER TRUST FUND.**

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

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

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

21 “(b) TRANSFERS TO TRUST FUND.—There are here-
22 by appropriated to the Clean Water Trust Fund amounts
23 equivalent to the penalties collected under section 309 of
24 this Act and the penalties collected under section 505(a)
25 of this Act (excluding any amounts ordered to be used to

1 carry out mitigation projects under section 309 or 505(a),
2 as the case may be).

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

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

14 (1) by inserting “(a) IN GENERAL.—” before
15 “There is”; and

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

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

1 **SEC. 14. RETROACTIVE APPLICABILITY.**

2 Sections 101(h), 309(g)(6)(A), 505(a)(1), 505(b),
3 505(g), and 505(i) of the Federal Water Pollution Control
4 Act, as inserted or amended by this Act, shall be retro-
5 actively applicable to all cases pending under such Act on
6 the date of the enactment of this Act and all cases brought
7 on or after such date of enactment relating to violations
8 which occurred before such date of amendment.

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