

104TH CONGRESS
1ST SESSION

H. R. 1262

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 1995

Mr. PALLONE (for himself, Mr. SHAYS, Mr. GILCHREST, Mr. DEFazio, Mr. TOWNS, Ms. ROYBAL-ALLARD, Mr. STARK, Mrs. LOWEY, Mr. JACOBS, Mr. ROMERO-BARCELÓ, and Mr. JOHNSTON of Florida) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clean Water Enforce-
5 ment and Compliance Improvement Amendments Act of
6 1995”.

7 **SEC. 2. FINDINGS.**

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

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

5 (2) current enforcement programs of the Ad-
6 ministrator of the Environmental Protection Agency
7 and the States fail to address violations of such per-
8 mits in a timely and effective manner;

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

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

16 (5) swift and timely enforcement by the Admin-
17 istrator and the States of violations of such permits
18 is necessary to increase levels of compliance with
19 such permits; and

20 (6) actions of private citizens have been effec-
21 tive in enforcing such permits and directing funds to
22 environmental mitigation projects with \$11,000,000
23 in penalties and interest having been recovered and
24 deposited with the Treasury of the United States
25 over the fiscal years 1988 through 1993.

1 (b) FINDING WITH RESPECT TO HARM CAUSED BY
2 VIOLATIONS.—Section 101 of the Federal Water Pollution
3 Control Act (33 U.S.C. 1251) is amended by adding at
4 the end the following:

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

17 “(i) FINDING WITH RESPECT TO CITIZEN SUITS.—
18 Congress finds that citizen suits are a valuable means of
19 enforcement of this Act and urges the Administrator to
20 take actions to encourage such suits, including providing
21 information concerning violators to citizen groups to assist
22 them in bringing suits, providing expert witnesses and
23 other evidence with respect to such suits, and filing amicus
24 curiae briefs on important issues related to such suits.”.

1 **SEC. 3. VIOLATIONS OF REQUIREMENTS OF LOCAL CON-**
2 **TROL AUTHORITIES.**

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

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

13 **SEC. 4. INSPECTIONS, MONITORING, AND PROVIDING IN-**
14 **FORMATION.**

15 (a) APPLICABILITY OF REQUIREMENTS.—Section
16 308(a) of the Federal Water Pollution Control Act (33
17 U.S.C. 1318(a)) is amended by striking “the owner or op-
18 erator of any point source” and inserting “a person sub-
19 ject to a requirement of this Act”.

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

22 (1) by inserting “(including information con-
23 tained in the Permit Compliance System of the En-
24 vironmental Protection Agency)” after “obtained
25 under this section”;

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

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

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

6 “(e) PUBLIC INFORMATION.—

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

20 “(A) indicates the water quality standard
21 that is being violated or the nature and extent
22 of the restriction on fish or shellfish consump-
23 tion, as the case may be;

24 “(B) includes (i) information on the envi-
25 ronmental and health effects associated with

1 the failure to meet such standard or with the
2 consumption of fish or shellfish subject to the
3 restriction, and (ii) a phone number for obtain-
4 ing additional information relating to the viola-
5 tion and restriction; and

6 “(C) will be maintained until the body of
7 water is in compliance with the water quality
8 standard or until all fish and shellfish consump-
9 tion restrictions are terminated with respect to
10 the body of water, as the case may be.

11 “(2) NOTICE OF DISCHARGES TO NAVIGABLE
12 WATERS.—Except for permits issued to municipali-
13 ties for discharges composed entirely of stormwater
14 under section 402 of this Act, each permit issued
15 under section 402 by the Administrator or by a
16 State shall ensure compliance with the following
17 requirements:

18 “(A) Every permittee shall conspicuously
19 maintain at all public entrances to the facility
20 a clearly visible sign which indicates that the
21 facility discharges pollutants into navigable wa-
22 ters and the location of such discharges; the
23 name, business address, and phone number of
24 the permittee; the permit number; and a loca-
25 tion at which a copy of the permit and public

1 information required by this paragraph is main-
2 tained and made available for inspection or a
3 phone number for obtaining such information.

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

20 “(3) REGULATIONS.—

21 “(A) ISSUANCE.—The Administrator—

22 “(i) not later than 6 months after the
23 date of the enactment of this subsection,
24 shall propose regulations to carry out this
25 subsection; and

1 “(ii) not later than 18 months after
2 such date of enactment, shall issue such
3 regulations.

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

6 “(i) uniform requirements and proce-
7 dures for identifying and posting bodies of
8 water under paragraph (1);

9 “(ii) minimum information to be in-
10 cluded in signs posted and notices issued
11 pursuant to this subsection;

12 “(iii) uniform requirements and proce-
13 dures for fish and shellfish sampling and
14 analysis;

15 “(iv) uniform requirements for deter-
16 mining the nature and extent of fish and
17 shellfish bans, advisories, and consumption
18 restrictions which—

19 “(I) address cancer and
20 noncancer human health risks;

21 “(II) take into account the ef-
22 fects of all fish and shellfish contami-
23 nants, including the cumulative and
24 synergistic effects;

1 “(III) assure the protection of
2 subpopulations who consume higher
3 than average amounts of fish and
4 shellfish or are particularly susceptible
5 to the effects of such contamination;

6 “(IV) address race, gender, eth-
7 nic composition, or social and eco-
8 nomic factors, based on the latest
9 available studies of national or re-
10 gional consumption by and impacts on
11 such subpopulations unless more reli-
12 able site-specific data is available;

13 “(V) are based on a margin of
14 safety that takes into account the un-
15 certainties in human health impacts
16 from such contamination; and

17 “(VI) evaluate assessments of
18 health risks of contaminated fish and
19 shellfish that are used in pollution
20 control programs developed by the Ad-
21 ministrator under this Act.”.

22 (d) STATE REPORTS.—Section 305(b)(1) of such Act
23 (33 U.S.C. 1315(b)(1)) is amended—

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

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

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

4 “(F) a list identifying bodies of water for
5 which signs were posted under section
6 308(e)(1) in the preceding year.”.

7 **SEC. 5. CIVIL PENALTIES.**

8 (a) ENFORCEMENT OF LOCAL PRETREATMENT RE-
9 QUIREMENTS.—

10 (1) COMPLIANCE ORDERS.—

11 (A) INITIAL ACTION.—Section 309(a)(1) of
12 the Federal Water Pollution Control Act (33
13 U.S.C. 1319(a)(1)) is amended by inserting
14 after “404 of this Act,” the following: “or is in
15 violation of any requirement imposed in a
16 pretreatment program approved under section
17 402(a)(3) or 402(b)(8) of this Act,”.

18 (B) ISSUANCE OF ORDERS.—Section
19 309(a)(3) of such Act is amended by inserting
20 after “404 of this Act by a State,” the follow-
21 ing: “or is in violation of any requirement im-
22 posed in a pretreatment program approved
23 under section 402(a)(3) or 402(b)(8) of this
24 Act,”.

1 (2) CRIMINAL PENALTIES.—Section
2 309(c)(3)(A) of such Act is amended by inserting
3 after “Army or by a State,” the following: “or know-
4 ingly violates any requirement imposed in a
5 pretreatment program approved under section
6 402(a)(3) or 402(b)(8) of this Act,”.

7 (3) ADMINISTRATIVE PENALTIES.—Section
8 309(g)(1)(A) of such Act is amended by inserting
9 after “404 by a State,” the following: “or has vio-
10 lated any requirement imposed in a pretreatment
11 program approved under section 402(a)(3) or
12 402(b)(8) of this Act or an order issued by the Ad-
13 ministrator under subsection (a) of this section,”.

14 (b) TREATMENT OF SINGLE OPERATIONAL UP-
15 SETS.—

16 (1) CRIMINAL PENALTIES.—Section 309(c) of
17 such Act is amended by striking paragraph (5) and
18 redesignating paragraphs (6) and (7) as paragraphs
19 (5) and (6), respectively.

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

22 (3) ADMINISTRATIVE PENALTIES.—Section
23 309(g)(3) of such Act is amended by striking the
24 last sentence.

1 (c) USE OF CIVIL PENALTIES FOR MITIGATION
2 PROJECTS.—

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

10 (2) CONFORMING AMENDMENT.—Section
11 505(a) of such Act (33 U.S.C. 1365(a)) is amended
12 by inserting before the period at the end of the last
13 sentence the following: “, including ordering the use
14 of a civil penalty for carrying out mitigation projects
15 in accordance with such section 309(d)”.

16 (d) DETERMINATION OF AMOUNT OF PENALTIES.—

17 (1) CIVIL PENALTIES.—The second sentence of
18 section 309(d) of such Act (33 U.S.C. 1319(d)) is
19 amended by inserting “the amount of any penalty
20 previously imposed on the violator by a court or ad-
21 ministrative agency for the same violation or viola-
22 tions,” after “economic impact of the penalty on the
23 violator,”.

24 (2) ADMINISTRATIVE PENALTIES.—Section
25 309(g)(3) of such Act is amended—

1 (A) by striking “or savings”; or

2 (B) by inserting “the amount of any pen-
3 alty previously imposed on the violator by a
4 court or administrative agency for the same vio-
5 lation or violations,” after “resulting from the
6 violation,”.

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

14 (f) AMOUNTS OF ADMINISTRATIVE CIVIL PEN-
15 ALTIES.—

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

18 “(2) AMOUNT OF PENALTIES; NOTICE; HEAR-
19 ING.—

20 “(A) MAXIMUM AMOUNT OF PENALTIES.—
21 The amount of a civil penalty under paragraph
22 (1) may not exceed \$25,000 per violation per
23 day for each day during which the violation
24 continues.

1 “(B) WRITTEN NOTICE.—Before issuing
2 an order assessing a civil penalty under this
3 subsection, the Administrator or the Secretary,
4 as the case may be, shall give to the person to
5 be assessed the penalty written notice of the
6 Administrator’s or Secretary’s proposal to issue
7 the order and the opportunity to request, within
8 30 days of the date the notice is received by
9 such person, a hearing on the proposed order.

10 “(C) HEARINGS NOT ON THE RECORD.—If
11 the proposed penalty does not exceed \$25,000,
12 the hearing shall not be subject to section 554
13 or 556 of title 5, United States Code, but shall
14 provide a reasonable opportunity to be heard
15 and to present evidence.

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

23 (2) CONFORMING AMENDMENTS.—Section
24 309(g) of such Act is amended—

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

3 (B) in the second sentence of paragraph
4 (4)(C) by striking “(2)(A) in the case of a class
5 I civil penalty and paragraph (2)(B) in the case
6 of a class II civil penalty” and inserting “(2)”;
7 and

8 (C) in the first sentence of paragraph (8)
9 by striking “assessment—” and all that follows
10 through “by filing” and inserting “assessment
11 in the United States District Court for the Dis-
12 trict of Columbia or in the district in which the
13 violation is alleged to have occurred by filing”.

14 (g) STATE ENFORCEMENT ACTIONS AS BAR TO FED-
15 ERAL ENFORCEMENT ACTIONS.—Section 309(g)(6)(A) of
16 such Act is amended—

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

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

20 (3) in clause (iii)—

21 (A) by striking “, the Secretary, or the
22 State” and inserting “or the Secretary”; and

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

1 (h) RECOVERY OF ECONOMIC BENEFIT.—Section
2 309 of such Act is amended by adding at the end the
3 following:

4 “(h) RECOVERY OF ECONOMIC BENEFIT.—

5 “(1) GENERAL RULE.—Notwithstanding any
6 other provision of this section, any civil penalty as-
7 sessed and collected under this section must be in an
8 amount which is not less than the amount of the
9 economic benefit (if any) resulting from the violation
10 for which the penalty is assessed.

11 “(2) REGULATIONS.—Not later than 2 years
12 after the date of the enactment of this subsection,
13 the Administrator shall issue regulations establishing
14 a methodology for calculating the economic benefits
15 or savings resulting from violations of this Act.
16 Pending issuance of such regulations, this subsection
17 shall be in effect and economic benefits shall be cal-
18 culated for purposes of paragraph (1) on a case-by-
19 case basis.”.

20 (i) LIMITATION ON COMPROMISES.—Such section
21 309 is further amended by adding at the end the following:

22 “(i) LIMITATION ON COMPROMISES OF CIVIL PEN-
23 ALTIES.—Notwithstanding any other provision of this sec-
24 tion, the amount of a civil penalty assessed under this sec-

1 tion may not be compromised below the amount deter-
2 mined by adding—

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

5 “(2) 50 percent of the difference between the
6 amount of the civil penalty assessed and such mini-
7 mum amount.”.

8 (j) MINIMUM AMOUNT FOR SERIOUS VIOLATIONS.—

9 Such section 309 is further amended by adding at the end
10 the following:

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

13 “(1) SERIOUS VIOLATIONS.—Notwithstanding
14 any other provision of this section (other than para-
15 graph (2)), the minimum civil penalty which shall be
16 assessed and collected under this section from a per-
17 son—

18 “(A) for a discharge from a point source of
19 a hazardous pollutant which exceeds or other-
20 wise violates any applicable effluent limitation
21 established by or under this Act by 20 percent
22 or more, or

23 “(B) for a discharge from a point source
24 of a pollutant (other than a hazardous pollut-
25 ant) which exceeds or otherwise violates any ap-

1 plicable effluent limitation established by or
2 under this Act by 40 percent or more,
3 shall be \$1,000 for the first such violation in a 180-
4 day period.

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

9 “(A) for the second or more discharge in
10 a 180-day period from a point source of a haz-
11 ardous pollutant which exceeds or otherwise vio-
12 lates any applicable effluent limitation estab-
13 lished by or under this Act by 20 percent or
14 more,

15 “(B) for the second or more discharge in
16 a 180-day period from a point source of a pol-
17 lutant (other than a hazardous pollutant) which
18 exceeds or otherwise violates any applicable ef-
19 fluent limitation established by or under this
20 Act by 40 percent or more,

21 “(C) for the fourth or more discharge in a
22 180-day period from a point source of any pol-
23 lutant which exceeds or otherwise violates the
24 same effluent limitation, or

1 “(D) for not filing in a 180-day period 2
2 or more reports in accordance with section
3 402(r)(1),
4 shall be \$5,000 for each of such violations.

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

15 “(4) ANNUAL REPORTING.—The Administrator
16 shall transmit to Congress and to the Governors of
17 the States, and shall publish in the Federal Register,
18 on an annual basis a list of all persons identified as
19 significant noncompliers under paragraph (3) in the
20 preceding calendar year and the violations which re-
21 sulted in such classifications.

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

1 (k) STATE PROGRAM.—Section 402(b)(7) of such Act
2 (33 U.S.C. 1342(b)(7)) is amended to read as follows:

3 “(7) To abate violations of the permit or the
4 permit program which shall include, beginning on
5 the last day of the 2-year period beginning on the
6 date of the enactment of the Clean Water Compli-
7 ance and Enforcement Improvement Amendments
8 Act of 1995, a penalty program comparable to the
9 Federal penalty program under section 309 of this
10 Act and which shall include at a minimum criminal,
11 civil, and civil administrative penalties, and may in-
12 clude other ways and means of enforcement, which
13 the State demonstrates to the satisfaction of the Ad-
14 ministrator are equally effective as the Federal pen-
15 alty program;”.

16 (l) FEDERAL PROCUREMENT COMPLIANCE INCEN-
17 TIVE.—Section 508(a) of such Act (33 U.S.C. 1368(a))
18 is amended by inserting after the second comma “or who
19 is identified under section 309(j)(3) of this Act,”.

20 **SEC. 6. NATIONAL POLLUTANT DISCHARGE ELIMINATION**
21 **PERMITS.**

22 (a) WITHDRAWAL OF STATE PROGRAM APPROVAL.—
23 Section 402(b) of the Federal Water Pollution Control Act
24 (33 U.S.C. 1342(b)) is amended by striking “unless he
25 determines that adequate authority does not exist:” and

1 inserting the following: “only when he determines that
2 adequate authority exists and shall withdraw program ap-
3 proval whenever he determines that adequate authority no
4 longer exists:”.

5 (b) JUDICIAL REVIEW OF RULINGS ON APPLICA-
6 TIONS FOR STATE PERMITS.—Section 402(b)(3) of such
7 Act is amended by inserting “and to ensure that any inter-
8 ested person who participated in the public comment proc-
9 ess and any other person who could obtain judicial review
10 of that action under any other applicable law has the right
11 to judicial review of such ruling” before the semicolon at
12 the end.

13 (c) INSPECTIONS FOR MAJOR INDUSTRIAL AND MU-
14 NICIPAL DISCHARGERS.—Section 402(b) of such Act is
15 amended—

16 (1) by striking “and” at the end of paragraph
17 (8);

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

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

21 “(10) To ensure that any permit for a dis-
22 charge from a major industrial or municipal facility,
23 as defined by the Administrator by regulation, in-
24 cludes conditions under which such facility will be

1 subject to at least annual inspections by the State
2 in accordance with subsection (q) of this section;”.

3 (d) MONTHLY REPORTS FOR SIGNIFICANT INDUS-
4 TRIAL USERS OF POTWS.—Section 402(b) of such Act
5 is further amended by adding at the end the following:

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

15 (e) PERMITS REQUIRED FOR INTRODUCTION OF
16 POLLUTANTS INTO POTWS.—Section 402(b) of such Act
17 is further amended by adding at the end the following:

18 “(12) To ensure that, after the last day of the
19 2-year period beginning on the date of the enact-
20 ment of this paragraph, any significant industrial
21 user, or other source designated by the Adminis-
22 trator, introducing a pollutant into a publicly owned
23 treatment works has, and operates in accordance
24 with, a permit issued by the treatment works or the
25 State for introduction of such pollutant; and”.

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

4 “(13) To ensure that the State will grant to
5 publicly owned treatment works in the State, not
6 later than 3 years after the date of the enactment
7 of this paragraph, authority, power, and responsibil-
8 ity to conduct inspections under subsection (q) of
9 this section and to assess and collect civil penalties
10 and civil administrative penalties under paragraph
11 (7) of this subsection.”.

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

14 “(q) INSPECTION.—

15 “(1) GENERAL RULE.—Each permit for a dis-
16 charge into the navigable waters or introduction of
17 pollutants into a publicly owned treatment works is-
18 sued under this section shall include conditions
19 under which the effluent being discharged will be
20 subject to random inspections in accordance with
21 this subsection by the Administrator or the State, in
22 the case of a State permit program under this
23 section.

24 “(2) MINIMUM STANDARDS.—The Adminis-
25 trator shall establish minimum standards for inspec-

1 tions under this subsection. Such standards shall re-
2 quire, at a minimum, the following:

3 “(A) An annual representative sampling by
4 the Administrator or the State, in the case of
5 a State permit program under this section, of
6 the effluent being discharged; except that if the
7 discharge is not from a major industrial or mu-
8 nicipal facility such sampling shall be conducted
9 at least once every 3 years.

10 “(B) An analysis of all samples collected
11 under subparagraph (A) by a Federal or State
12 owned and operated laboratory or a State ap-
13 proved laboratory, other than one that is being
14 used by the permittee or that is directly or indi-
15 rectly owned, operated, or managed by the
16 permittee.

17 “(C) An evaluation of the maintenance
18 record of any treatment equipment of the
19 permittee.

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

22 “(E) A random check of discharge mon-
23 itoring reports of the permittee for each 12-
24 month period for the purpose of determining
25 whether or not such reports are consistent with

1 the applicable analyses conducted under sub-
2 paragraph (B).

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

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

7 “(r) REPORTING.—

8 “(1) GENERAL RULE.—Each person holding a
9 permit issued under this section which is determined
10 by the Administrator to be a major industrial or mu-
11 nicipal discharger of pollutants into the navigable
12 waters shall prepare and submit to the Adminis-
13 trator a monthly discharge monitoring report. Any
14 other person holding a permit issued under this sec-
15 tion shall prepare and submit to the Administrator
16 quarterly discharge monitoring reports or more fre-
17 quent discharge monitoring reports if the Adminis-
18 trator requires. Such reports shall contain, at a min-
19 imum, such information as the Administrator shall
20 require by regulation.

21 “(2) REPORTING OF HAZARDOUS DIS-
22 CHARGES.—

23 “(A) GENERAL RULE.—If a discharge
24 from a point source for which a permit is issued
25 under this section exceeds an effluent limitation

1 contained in such permit which is based on an
2 acute water quality standard or any other dis-
3 charge which may cause an exceedance of an
4 acute water quality standard or otherwise is
5 likely to cause injury to persons or damage to
6 the environment or to pose a threat to human
7 health and the environment, the person holding
8 such permit shall notify the Administrator, in
9 writing, of such discharge not later than 2
10 hours after the later of the time at which such
11 discharge commenced or the time at which the
12 permittee knew or had reason to know of such
13 discharge.

14 “(B) SPECIAL RULE FOR HAZARDOUS POL-
15 LUTANTS.—If a discharge described in subpara-
16 graph (A) is of a hazardous pollutant (as de-
17 fined in section 309(j) of this Act), the person
18 holding such permit shall provide the Adminis-
19 trator with such additional information on the
20 discharge as may be required by the Adminis-
21 trator. Such additional information shall be
22 provided to the Administrator within 24 hours
23 after the later of the time at which such dis-
24 charge commenced or the time at which the
25 permittee became aware of such discharge.

1 Such additional information shall include, at a
2 minimum, an estimate of the danger posed by
3 the discharge to the environment, whether the
4 discharge is continuing, and the measures taken
5 or being taken (i) to remediate the problem
6 caused by the discharge and any damage to the
7 environment, and (ii) to avoid a repetition of
8 the discharge.

9 “(3) SIGNATURE.—All reports filed under para-
10 graph (1) must be signed by the highest ranking of-
11 ficial having day-to-day managerial and operational
12 responsibility for the facility at which the discharge
13 occurs or, in the absence of such person, by another
14 responsible high ranking official at such facility.
15 Such highest ranking official shall be responsible for
16 the accuracy of all information contained in such re-
17 ports; except that such highest ranking official may
18 file with the Administrator amendments to any such
19 report if the report was signed in the absence of the
20 highest ranking official by another high ranking offi-
21 cial and if such amendments are filed within 7 days
22 of the return of the highest ranking official.”.

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

1 “(s) SIGNIFICANT NONCOMPLIERS.—No permit may
2 be issued under this section to any person (other than a
3 publicly owned treatment works) identified under section
4 309(j)(3) of this Act or to any other person owned or con-
5 trolled by the identified person, owning or controlling the
6 identified person, or under common control with the iden-
7 tified person, until the Administrator or the State or
8 States in which the violation or violations occur deter-
9 mines that the condition or conditions giving rise to such
10 violation or violations have been corrected. No permit ap-
11 plication submitted after the date of the enactment of this
12 subsection may be approved unless the application in-
13 cludes a list of all violations of this Act by a person identi-
14 fied under section 309(j) of this Act during the 3-year pe-
15 riod preceding the date of submission of the application
16 and evidence indicating whether the underlying cause of
17 each such violation has been corrected.”.

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

21 (1) with respect to permits issued before such
22 date of enactment to a major industrial or municipal
23 discharger, such amendments shall take effect on the
24 last day of the 1-year period beginning on such date
25 of enactment; and

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

5 **SEC. 7. EXPIRED STATE PERMITS.**

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

9 “(5) EXPIRED STATE PERMITS.—In any case in
10 which—

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

13 “(B) the permittee has submitted an appli-
14 cation to the State for a new permit for the dis-
15 charge, and

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

21 **SEC. 8. COMPLIANCE SCHEDULE.**

22 Section 302(b)(2)(B) of the Federal Water Pollution
23 Control Act (33 U.S.C. 1312(b)(2)(B)) is amended by
24 adding at the end the following: “The Administrator may
25 only issue a permit pursuant to this subparagraph for a

1 period exceeding 2 years if the Administrator makes the
2 findings described in clauses (i) and (ii) of this subpara-
3 graph on the basis of a public hearing.”.

4 **SEC. 9. EMERGENCY POWERS.**

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

7 **“SEC. 504. COMMUNITY PROTECTION.**

8 “(a) ISSUANCE OF ORDERS; COURT ACTION.—Not-
9 withstanding any other provision of this Act, whenever the
10 Administrator finds that, because of an actual or threat-
11 ened direct or indirect discharge of a pollutant, there may
12 be an imminent and substantial endangerment to the pub-
13 lic health or welfare (including the livelihood of persons)
14 or the environment, the Administrator may issue such or-
15 ders or take such action as may be necessary to protect
16 public health or welfare or the environment and commence
17 a suit (or cause it to be commenced) in the United States
18 district court for the district where the discharge or threat
19 occurs. Such court may grant such relief to abate the
20 threat and to protect against the endangerment as the
21 public interest and the equities require, enforce, and ad-
22 judge penalties for disobedience to orders of the Adminis-
23 trator issued under this section, and grant other relief ac-
24 cording to the public interest and the equities of the case.

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

7 **SEC. 10. CITIZEN SUITS.**

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

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

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

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

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

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

23 (1) in paragraph (1)(B)—

24 (A) by striking “, or a State”; and

1 (B) by striking “right.” and inserting
2 “right and may obtain costs of litigation under
3 subsection (d), or”; and

4 (2) by adding at the end the following: “The
5 notice under paragraph (1)(A) need set forth only
6 violations which have been specifically identified in
7 the discharge monitoring reports of the alleged viola-
8 tor. An action by a State under subsection (a)(1)
9 may be brought at any time. No judicial action by
10 the Administrator or a State shall bar an action for
11 the same violation under subsection (a)(1) unless the
12 action is by the Administrator and meets the re-
13 quirements of this paragraph. No administrative ac-
14 tion by the Administrator or a State shall bar a
15 pending action commenced after February 4, 1987,
16 for the same violation under subsection (a)(1) unless
17 the action by the Administrator or a State meets the
18 requirements of section 309(g)(6) of this Act.”.

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

1 (e) PRETREATMENT REQUIREMENTS.—Section
2 505(f)(4) of such Act is amended by striking “or
3 pretreatment standards” and inserting “or pretreatment
4 standard or requirement described in section 307(d)”.

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

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

10 “(g) CITIZEN DEFINED.—For purposes of this sec-
11 tion, the term ‘citizen’ means a person or persons having
12 an interest (including a recreational, aesthetic, environ-
13 mental, health, or economic interest) which is, has been,
14 or may be adversely affected and includes a person who
15 uses or enjoys the waters into which the discharge flows
16 (either directly or through a publicly owned treatment
17 works), who uses or enjoys aquatic resources or nearby
18 lands associated with the waters, or who would use or
19 enjoy the waters, aquatic resources, or nearby lands if they
20 were less polluted.”.

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

23 “(i) APPLICABILITY OF OFFERS OF JUDGMENT.—Of-
24 fers of judgment pursuant to Rule 68 of the Federal Rules

1 of Civil Procedure shall not be applicable to actions
2 brought under subsection (a)(1) of this section.”.

3 **SEC. 11. ISSUANCE OF SUBPOENAS.**

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

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

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

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

16 (2) by inserting after the comma at the end of
17 clause (E) “including a decision not to include any
18 pollutant in such effluent limitation or other limita-
19 tion if the Administrator has or is made aware of in-
20 formation indicating that such pollutant is present
21 in any discharge subject to such limitation,”; and

22 (3) by striking “and (G)” and inserting the fol-
23 lowing: “(G) in issuing or approving any water qual-
24 ity standard under section 303(c) or 303(d), (H) in
25 issuing any water quality criterion under section

1 304(a), including a decision not to address any ef-
2 fect of the pollutant subject to such criterion if the
3 Administrator has or is made aware of information
4 indicating that such effect may occur, and (J)’’.

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

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

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

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

14 “(b) TRANSFERS TO TRUST FUND.—There are here-
15 by appropriated to the Clean Water Trust Fund amounts
16 equivalent to the penalties collected under section 309 of
17 this Act and the penalties collected under section 505(a)
18 of this Act (excluding any amounts ordered to be used to
19 carry out mitigation projects under section 309 or 505(a),
20 as the case may be).

21 “(c) ADMINISTRATION OF TRUST FUND.—The Ad-
22 ministrator shall administer the Clean Water Trust Fund.
23 The Administrator may use moneys in the Fund to carry
24 out inspections and enforcement activities pursuant to this
25 Act. In addition, the Administrator may make such

1 amounts of money in the Fund as the Administrator de-
2 termines appropriate available to carry out title VI of this
3 Act.”.

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

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

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

10 “(b) TREATMENT OF TRANSFERS FROM CLEAN
11 WATER TRUST FUND.—For purposes of this title,
12 amounts made available from the Clean Water Trust
13 Fund under section 519 of this Act to carry out this title
14 shall be treated as funds authorized to be appropriated
15 to carry out this title and as funds made available under
16 this title.”.

17 **SEC. 14. APPLICABILITY.**

18 Sections 101(h), 309(g)(6)(A), 505(a)(1), 505(b),
19 505(g), and 505(i) of the Federal Water Pollution Control
20 Act, as inserted or amended by this Act, shall be applica-
21 ble to all cases pending under such Act on the date of
22 the enactment of this Act and all cases brought on or after
23 such date of enactment relating to violations which oc-
24 curred before such date of amendment.

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