

104TH CONGRESS
1ST SESSION

H. R. 961

To amend the Federal Water Pollution Control Act.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 1995

Mr. SHUSTER (for himself, Mr. HAYES, Mr. CLINGER, Mr. PARKER, Mr. EMERSON, Mr. LAUGHLIN, Mr. ZELIFF, Mr. POSHARD, Mr. EWING, Ms. DANNER, Mr. HUTCHINSON, Mr. DEAL of Georgia, Mr. MICA, Mr. BARCIA, Mr. DUNCAN, and Mr. PETE GEREN of Texas) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend the Federal Water Pollution Control Act.

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

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

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

6 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Definition.
- Sec. 3. Amendment of Federal Water Pollution Control Act.

TITLE I—RESEARCH AND RELATED PROGRAMS

- Sec. 101. National goals and policies.
- Sec. 102. State management assistance.

TITLE II—CONSTRUCTION GRANTS

- Sec. 201. Uses of funds.
- Sec. 202. Administration of closeout of construction grant program.
- Sec. 203. Sewage collection systems.
- Sec. 204. Treatment works defined.
- Sec. 205. Value engineering review.

TITLE III—STANDARDS AND ENFORCEMENT

- Sec. 301. Effluent limitations.
- Sec. 302. Information and guidelines.
- Sec. 303. Risk and cost-benefit analysis.
- Sec. 304. Toxic pollutants.
- Sec. 305. Federal enforcement.
- Sec. 306. Federal facilities.
- Sec. 307. Clean lakes.
- Sec. 308. Nonpoint source management programs.
- Sec. 309. National estuary program.
- Sec. 310. State watershed management programs.

TITLE IV—PERMITS AND LICENSES

- Sec. 401. Waste treatment systems.
- Sec. 402. Stormwater discharge permits.
- Sec. 403. Combined sewer overflows.
- Sec. 404. Intake credits.
- Sec. 405. Beneficial use of biosolids.

TITLE V—GENERAL PROVISIONS

- Sec. 501. Consultation with States.
- Sec. 502. Oil type differentiation.
- Sec. 503. Needs estimate.
- Sec. 504. General program authorizations.
- Sec. 505. Adequately funded mandates.

TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

- Sec. 601. Water use efficiency measures.
- Sec. 602. Guidance for small systems.
- Sec. 603. Types of assistance.
- Sec. 604. Allotment of funds.
- Sec. 605. Authorization of appropriations.

TITLE VII—MISCELLANEOUS PROVISIONS

- Sec. 701. Future funding options for infrastructure projects.
- Sec. 702. Technical amendments.

TITLE VIII—WETLANDS CONSERVATION AND MANAGEMENT

- Sec. 801. Short title.
- Sec. 802. Findings and statement of purpose.
- Sec. 803. Wetlands conservation and management.
- Sec. 804. Definitions.
- Sec. 805. Technical and conforming amendments.

Sec. 806. Effective date.

1 **SEC. 2. DEFINITION.**

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

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

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

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

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

15 (a) STATE STRATEGIES.—Section 101(a) (33 U.S.C.
16 1251(a)) is amended—

17 (1) by striking “and” at the end of paragraph
18 (6);

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

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

22 “(8) it is the national policy to support State
23 efforts undertaken in consultation with local govern-
24 ments to identify, prioritize, and implement water
25 pollution prevention and control strategies;”.

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

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

8 (c) RECLAMATION AND REUSE.—

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

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

15 “(10) it is the national policy that beneficial
16 reuse of waste water effluent, residuals, and byprod-
17 ucts be encouraged to the fullest extent possible;
18 and”.

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

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

24 (e) NET BENEFITS.—Section 101 is amended by
25 adding at the end the following:

1 “(h) NET BENEFITS.—It is the national policy that
2 the development and implementation of water quality pro-
3 tection programs pursuant to this Act shall produce bene-
4 fits to the public health and safety and to the environment
5 that justify the cost to the Government and the public of
6 implementation of and compliance with the requirements
7 of this Act. The cost-benefit analysis shall consider both
8 quantifiable and qualitative measures. In accordance with
9 this policy, the Administrator shall identify, assess, and
10 document alternative regulatory approaches for protecting
11 water quality in the Nation and shall develop regulations
12 and guidance based upon the best obtainable scientific,
13 technical, economic, and other information, including the
14 risk reduction benefits achievable by the identified alter-
15 natives. In the event that the required assessment cannot
16 be made or the selected regulatory approach does not
17 achieve maximum net benefits, the Administrator shall re-
18 port the reasons therefor to Congress.”.

19 **SEC. 102. STATE MANAGEMENT ASSISTANCE.**

20 Section 106(a) (33 U.S.C. 1255(a)) is amended—

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

22 (2) by inserting after “1990” the following: “,
23 such sums as may be necessary for each of fiscal
24 years 1991 through 1995, and \$100,000,000 per fis-

1 cal year for each of fiscal years 1996 through
2 2000”; and

3 (3) by adding at the end the following: “States
4 or interstate agencies receiving grants under this
5 section may use such funds to finance, with other
6 States or interstate agencies, studies and projects on
7 interstate issues.”.

8 **TITLE II—CONSTRUCTION** 9 **GRANTS**

10 **SEC. 201. USES OF FUNDS.**

11 (a) REMOVAL OF LIMITATION.—Section 201(g)(1)
12 (33 U.S.C. 1281(g)(1)) is amended by striking the period
13 at the end of the first sentence and all that follows
14 through the period at the end of the last sentence and
15 inserting the following: “and for any purpose for which
16 a grant may be made under sections 319(h) and 319(i)
17 of this Act (including any innovative and alternative ap-
18 proaches for the control of nonpoint sources of pollu-
19 tion).”.

20 (b) CONSIDERATION OF WATER USE EFFICIENCY.—
21 Section 201(g)(2) (33 U.S.C. 201(g)(2)) is amended—

22 (1) by striking “and” at the end of subpara-
23 graph (A);

24 (2) by striking the period at the end of sub-
25 paragraph (B) and inserting “; and”; and

1 (3) by adding at the end the following new sub-
2 paragraph:

3 “(C) wastewater reduction and other water use
4 efficiency options have been studied and evaluated
5 and, to the extent practicable and cost effective, im-
6 plemented.”.

7 **SEC. 202. ADMINISTRATION OF CLOSEOUT OF CONSTRU-**
8 **CTION GRANT PROGRAM.**

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

17 **SEC. 203. SEWAGE COLLECTION SYSTEMS.**

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

19 (1) in clause (1) by striking “an existing collec-
20 tion system” and inserting “a collection system ex-
21 isting on the date of the enactment of the Clean
22 Water Amendments of 1995”;

23 (2) in clause (2) by striking “an existing com-
24 munity” and inserting “a community existing on
25 such date of enactment”; and

1 (3) in clause (2) by inserting after “sufficient
2 existing” the following: “on such date of enact-
3 ment”.

4 **SEC. 204. TREATMENT WORKS DEFINED.**

5 (a) INCLUSION OF OTHER LANDS.—Section
6 212(2)(A) (33 U.S.C. 1292(2)(A)) is amended—

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

8 (2) by striking “is used for ultimate” and in-
9 serting “will be used for ultimate”; and

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

13 (b) POLICY ON COST EFFECTIVENESS.—Section
14 218(a) (33 U.S.C. 1298(a)) is amended by striking “com-
15 bination of devices and systems” and all that follows
16 through “from such treatment;” and inserting “treatment
17 works;”.

18 **SEC. 205. VALUE ENGINEERING REVIEW.**

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

21 **TITLE III—STANDARDS AND**
22 **ENFORCEMENT**

23 **SEC. 301. EFFLUENT LIMITATIONS.**

24 (a) INNOVATIVE TECHNOLOGIES.—Section 301(k)
25 (33 U.S.C. 1311(k)) is amended—

1 (1) by striking “lower costs” and all that fol-
2 lows through “achievable,” and inserting “reducing
3 the release of pollutants to other media,”;

4 (2) by striking “a date” and inserting “a sched-
5 ule for compliance”;

6 (3) by inserting “which includes a date for such
7 compliance” before “no later than”; and

8 (4) by striking “two years” and inserting “3
9 years”.

10 (b) COAL REMINING.—Section 301(p)(2) (33 U.S.C.
11 1311(p)(2)) is amended by inserting before the period at
12 the end the following: “except where monitoring dem-
13 onstrates that the receiving waters do not meet such water
14 quality standards prior to commencement of remining and
15 where the water quality of the receiving stream is pro-
16 jected to be improved by remining”.

17 **SEC. 302. INFORMATION AND GUIDELINES.**

18 (a) GUIDANCE ON WATER QUALITY STANDARDS FOR
19 LOW FLOW AREAS.—Section 304(a) (33 U.S.C. 1314(a))
20 is amended by adding at the end the following:

21 “(9) GUIDANCE ON STANDARDS FOR LOW FLOW
22 AREAS.—Not later than 2 years after the date of the
23 enactment of this paragraph, and after providing no-
24 tice and opportunity for public comment, the Admin-
25 istrator shall develop and publish guidance to the

1 States on development and adoption of water quality
2 standards applicable to navigable waters that con-
3 tain little or no water during low flow periods. The
4 guidance shall take into account the limited ability
5 of such waters to support aquatic life and certain
6 designated uses and shall include consideration of
7 the role the discharge may play in maintaining the
8 flow or level of such waters.”.

9 (b) PROCEDURAL GUIDELINES.—Section
10 304(i)(2)(D) (33 U.S.C. 1314(i)(2)(D)) is amended by in-
11 serting after “any person” the following: “(other than an
12 employee or official of a city, county, or local government
13 agency)”.

14 **SEC. 303. RISK AND COST-BENEFIT ANALYSIS.**

15 Section 304 (33 U.S.C. 1314) is amended by adding
16 at the end the following:

17 “(n) RISK ASSESSMENT GUIDELINES.—

18 “(1) RISK ASSESSMENT AND ANALYSIS RE-
19 QUIREMENTS.—In developing any standard, effluent
20 limitation, or other regulatory requirement (except
21 for issuance of a permit or establishment of any
22 purely procedural requirements) under this Act, or
23 issuing any guidance under this Act, the Adminis-
24 trator or the Secretary responsible for establishment
25 of such regulatory requirement or issuance of such

1 guidance shall perform a risk assessment consistent
2 with the guidance issued by the Administrator pur-
3 suant to paragraph (2). Such risk assessment shall
4 be performed in conjunction with the development of
5 any proposed regulation, and in any case shall be
6 subject to public notice and comment. No regulatory
7 requirement or guidance subject to this paragraph
8 shall be established or issued where the social, envi-
9 ronmental, and economic benefits of such require-
10 ment are not reasonably related to the anticipated
11 costs. The requirements of the preceding sentence
12 shall not apply to regulations that merely recite stat-
13 utory provisions. The requirements of this paragraph
14 shall not apply to guidance that solely clarifies, con-
15 firms, or explains an existing regulation, without
16 adding to or expanding on such regulation.

17 “(2) GUIDELINES.—Not later than 180 days
18 after the date of the enactment of this subsection,
19 and after providing notice and opportunity for public
20 comment, the Administrator shall issue guidelines
21 for conducting risk assessments. The guidelines
22 shall—

23 “(A) require use of all relevant, available,
24 scientific data, and information;

1 “(B) require identification and discussion
2 of—

3 “(i) all significant assumptions, infer-
4 ences, or models used in the risk assess-
5 ment;

6 “(ii) credible alternatives to each such
7 assumption, inference, or model;

8 “(iii) the sensitivity of the result to
9 the significant assumptions, inferences, or
10 models relied upon; and

11 “(iv) the extent to which any such as-
12 sumption, inference, or model has been
13 validated by or conflicts with empirical
14 data;

15 “(C) require, to the maximum extent prac-
16 tical, a quantitative estimate of the uncertainty
17 inherent in the risk assessment;

18 “(D) require a comparison of the nature
19 and extent of the risk identified by the risk as-
20 sessment with available information on other
21 risks to human health or the environment;

22 “(E) require an estimate of the nature and
23 extent of the incremental risk avoided by the
24 standard, effluent limitation, or other regu-
25 latory requirement, or related guidance, and the

1 social, environmental, and economic benefits an-
2 ticipated therefrom; and

3 “(F) require an estimate of the total so-
4 cial, environmental, and economic costs of im-
5 plementing or complying with the standard, ef-
6 fluent limitation, or other regulatory require-
7 ment, or related guidance.

8 “(3) APPLICATION TO STATES.—In developing
9 regulations or guidance under the Act, States may
10 apply the risk assessment guidance and risk analysis
11 standards set forth in paragraph (1).

12 “(4) EXCEPTIONS.—Standards, effluent limita-
13 tion, or other regulatory requirements, and related
14 guidance, that are issued in final form in the 1-year
15 period following the date of the enactment of this
16 subsection shall not be subject to the requirements
17 of paragraph (1).”.

18 **SEC. 304. TOXIC POLLUTANTS.**

19 (a) TOXIC EFFLUENT LIMITATIONS AND STAND-
20 ARDS.—Section 307(a)(2) (33 U.S.C. 1317(a)(2)) is
21 amended—

22 (1) by striking “(2) Each” and inserting
23 “(2)(A) TOXIC EFFLUENT LIMITATIONS AND STAND-
24 ARDS.—Each”;

1 (2) in subparagraph (A), as so designated, by
2 striking the third sentence; and

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

4 “(B) FACTORS.—The published effluent standard (or
5 prohibition) shall take into account—

6 “(i) the pollutant’s persistence, toxicity,
7 degradability, and bioaccumulation potential;

8 “(ii) the magnitude and risk of exposure to the
9 pollutant, including risks to affected organisms and
10 the importance of such organisms;

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

14 “(iv) the availability of, and risk posed by, sub-
15 stitute chemicals or processes or the availability of
16 treatment processes or control technology;

17 “(v) the beneficial and adverse social and eco-
18 nomic effects of the effluent standard, including the
19 impact on energy resources;

20 “(vi) the extent to which effective control is
21 being or may be achieved in an expeditious manner
22 under other regulatory authorities;

23 “(vii) the impact on national security interests;
24 and

1 “(viii) such other factors as the Administrator
2 considers appropriate.”.

3 (b) STATE WATER QUALITY STANDARDS.—Section
4 303(c) (33 U.S.C. 1313(c)) is amended by striking
5 “three” and all that follows through “1972)” and insert-
6 ing “5-year period beginning on the date of the enactment
7 of the Clean Water Amendments of 1995)”.

8 (c) FISH CONSUMPTION ADVISORIES.—Section 304
9 (33 U.S.C. 1314) is amended by adding at the end the
10 following:

11 “(n) FISH CONSUMPTION ADVISORIES.—After con-
12 sultation with appropriate Federal and State agencies,
13 and after providing notice and opportunity for public com-
14 ment, the Administrator may develop and issue guidance
15 that States may use—

16 “(1) in issuing fish consumption advisories;

17 “(2) in developing a monitoring program for
18 contaminants in fish and shellfish; and

19 “(3) in issuing scientific protocols for testing
20 contamination levels of fish.”.

21 (d) BEACH WATER QUALITY MONITORING.—

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

24 “(o) BEACH WATER QUALITY MONITORING.—After
25 consultation with appropriate Federal and State agencies,

1 and after providing notice and opportunity for public com-
2 ment, the Administrator may develop and issue guidance
3 that States may use in monitoring water quality at beach-
4 es and issuing health advisories with respect to beaches,
5 including testing protocols, recommendations on frequency
6 of testing and monitoring, recommendations on pollutants
7 for which monitoring and testing should be conducted, and
8 recommendations on when health advisories should be is-
9 sued.”.

10 (2) REPORTS.—Section 516(a) (33 U.S.C.
11 1375(a)) is amended by striking “and (9)” and in-
12 sserting “(9) the monitoring conducted by States on
13 the water quality of beaches and the issuance of
14 health advisories with respect to beaches, and (10)”.

15 **SEC. 305. FEDERAL ENFORCEMENT.**

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

19 “(h) ADJUSTMENT OF MONETARY PENALTIES FOR
20 INFLATION.—

21 “(1) IN GENERAL.—Not later than 4 years
22 after the date of the enactment of this paragraph,
23 and at least once every 4 years thereafter, the Ad-
24 ministrator shall adjust each monetary penalty pro-
25 vided by this section in accordance with paragraph

1 (2) and publish such adjustment in the Federal Reg-
2 ister.

3 “(2) METHOD.—An adjustment to be made
4 pursuant to paragraph (1) shall be determined by
5 increasing the maximum monetary penalty or the
6 range of maximum monetary penalties, as appro-
7 priate, by the cost-of-living adjustment.

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

12 “(A) the Consumer Price Index for the
13 month of June of the calendar year preceding
14 the adjustment; exceeds

15 “(B) the Consumer Price Index for—

16 “(i) with respect to the first adjust-
17 ment under this subsection, the month of
18 June of the calendar year preceding the
19 date of the enactment of this subsection;
20 and

21 “(ii) with respect to each subsequent
22 adjustment under this subsection, the
23 month of June of the calendar year in
24 which the amount of such monetary pen-

1 alty was last adjusted under this sub-
2 section.

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

6 “(5) APPLICABILITY.—Any increase to a mone-
7 etary penalty resulting from this subsection shall
8 apply only to violations which occur after the date
9 any such increase takes effect.”.

10 (b) JOINING STATES AS PARTIES IN ACTIONS IN-
11 VOLVING MUNICIPALITIES.—Section 309(e) (33 U.S.C.
12 1319(e)) is amended by striking “shall be joined as a
13 party. Such State” and inserting “may be joined as a
14 party. Any State so joined as a party”.

15 **SEC. 306. FEDERAL FACILITIES.**

16 (a) APPLICATION OF CERTAIN PROVISIONS.—Section
17 313(a) (33 U.S.C. 1323(a)) is amended by striking all
18 preceding subsection (b) and inserting the following:

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

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

22 “(1) IN GENERAL.—Each department, agency,
23 or instrumentality of the executive, legislative, and
24 judicial branches of the Federal Government—

1 “(A) having jurisdiction over any property
2 or facility, or

3 “(B) engaged in any activity resulting, or
4 which may result, in the discharge or runoff of
5 pollutants,

6 and each officer, agent, or employee thereof in the
7 performance of his official duties, shall be subject to,
8 and comply with, all Federal, State, interstate, and
9 local requirements, administrative authority, and
10 process and sanctions respecting the control and
11 abatement of water pollution in the same manner
12 and to the same extent as any nongovernmental en-
13 tity, including the payment of reasonable service
14 charges.

15 “(2) TYPES OF ACTIONS COVERED.—Paragraph
16 (1) shall apply—

17 “(A) to any requirement whether sub-
18 stantive or procedural (including any record-
19 keeping or reporting requirement, any require-
20 ment respecting permits, and any other require-
21 ment),

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

1 “(C) to any process and sanction, whether
2 enforced in Federal, State, or local courts or in
3 any other manner.

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

13 “(4) SOVEREIGN IMMUNITY.—

14 “(A) WAIVER.—The United States hereby
15 expressly waives any immunity otherwise appli-
16 cable to the United States with respect to any
17 requirement, administrative authority, and
18 process and sanctions referred to in paragraph
19 (1) (including any injunctive relief, any admin-
20 istrative order, any civil or administrative pen-
21 alty or fine referred to in paragraph (3), or any
22 reasonable service charge).

23 “(B) PROCESSING FEES.—The reasonable
24 service charges referred to in this paragraph in-
25 cludes fees or charges assessed in connection

1 with the processing and issuance of permits, re-
2 newal of permits, amendments to permits, re-
3 view of plans, studies, and other documents,
4 and inspection and monitoring of facilities, as
5 well as any other nondiscriminatory charges
6 that are assessed in connection with a Federal,
7 State, interstate, or local water pollution regu-
8 latory program.

9 “(5) EXEMPTIONS.—

10 “(A) GENERAL AUTHORITY OF PRESI-
11 DENT.—The President may exempt any effluent
12 source of any department, agency, or instru-
13 mentality in the executive branch from compli-
14 ance with any requirement to which paragraph
15 (1) applies if the President determines it to be
16 in the paramount interest of the United States
17 to do so; except that no exemption may be
18 granted from the requirements of section 306
19 or 307 of this Act.

20 “(B) LIMITATION.—No exemptions shall
21 be granted under subparagraph (A) due to lack
22 of appropriation unless the President shall have
23 specifically requested such appropriation as a
24 part of the budgetary process and the Congress

1 shall have failed to make available such re-
2 quested appropriation.

3 “(C) TIME PERIOD.—Any exemption under
4 subparagraph (A) shall be for a period not in
5 excess of 1 year, but additional exemptions may
6 be granted for periods of not to exceed 1 year
7 upon the President’s making a new determina-
8 tion.

9 “(D) MILITARY PROPERTY.—In addition to
10 any exemption of a particular effluent source,
11 the President may, if the President determines
12 it to be in the paramount interest of the United
13 States to do so, issue regulations exempting
14 from compliance with the requirements of this
15 section any weaponry, equipment, aircraft, ves-
16 sels, vehicles, or other classes or categories of
17 property, and access to such property, which
18 are owned or operated by the Armed Forces of
19 the United States (including the Coast Guard)
20 or by the National Guard of any State and
21 which are uniquely military in nature. The
22 President shall reconsider the need for such
23 regulations at 3-year intervals.

24 “(E) REPORTS.—The President shall re-
25 port each January to the Congress all exemp-

1 tions from the requirements of this section
2 granted during the preceding calendar year, to-
3 gether with the President’s reason for granting
4 such exemption.

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

16 “(7) PERSONAL LIABILITY OF FEDERAL EM-
17 PLOYEES.—No agent, employee, or officer of the
18 United States shall be personally liable for any civil
19 penalty under any Federal, State, interstate, or local
20 water pollution law with respect to any act or omis-
21 sion within the scope of the official duties of the
22 agent, employee, or officer.

23 “(8) CRIMINAL SANCTIONS.—An agent, em-
24 ployee, or officer of the United States shall be sub-
25 ject to any criminal sanction (including any fine or

1 imprisonment) under any Federal or State water
2 pollution law, but no department, agency, or instru-
3 mentality of the executive, legislative, or judicial
4 branch of the Federal Government shall be subject
5 to any such sanction.”.

6 (b) FUNDS COLLECTED BY A STATE.—Section 313
7 (33 U.S.C. 1323) is further amended by adding at the
8 end the following:

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

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

21 “(d) FEDERAL FACILITY ENFORCEMENT.—

22 “(1) ADMINISTRATIVE ENFORCEMENT BY
23 EPA.—The Administrator may commence an admin-
24 istrative enforcement action against any department,
25 agency, or instrumentality of the executive, legisla-

1 tive, or judicial branch of the Federal Government
2 pursuant to the enforcement authorities contained in
3 this Act.

4 “(2) PROCEDURE.—The Administrator shall
5 initiate an administrative enforcement action against
6 a department, agency, or instrumentality under this
7 subsection in the same manner and under the same
8 circumstances as an action would be initiated
9 against any other person under this Act. The
10 amount of any administrative penalty imposed under
11 this subsection shall be determined in accordance
12 with section 309(d) of this Act.

13 “(3) VOLUNTARY SETTLEMENT.—Any vol-
14 untary resolution or settlement of an action under
15 this subsection shall be set forth in an administra-
16 tive consent order.

17 “(4) CONFERRAL WITH EPA.—No administra-
18 tive order issued to a department, agency, or instru-
19 mentality under this section shall become final until
20 such department, agency, or instrumentality has had
21 the opportunity to confer with the Administrator.”.

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

1 “(e) LIMITATION ON ACTIONS AND RIGHT OF INTER-
2 VENTION.—Any violation with respect to which the Ad-
3 ministrator or Secretary, as applicable, has commenced
4 and is diligently prosecuting an action under this sub-
5 section, or for which the Administrator or Secretary, as
6 applicable, has issued a final order and the violator has
7 either paid a penalty or fine assessed under this subsection
8 or is subject to an enforceable schedule of corrective ac-
9 tions, shall not be the subject of an action under section
10 505 of this Act. In any action under this subsection, any
11 citizen may intervene as a matter of right.”.

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

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

19 “(21) The term ‘radioactive materials’ includes
20 source materials, special nuclear materials, and byproduct
21 materials (as such terms are defined under the Atomic
22 Energy Act of 1954) which are used, produced, or man-
23 aged at facilities not licensed by the Nuclear Regulatory
24 Commission; except that such term does not include any
25 material which is discharged from a vessel or other facility

1 covered by Executive Order 12344 (42 U.S.C. 7158 note;
2 relating to the Naval Nuclear Propulsion Program).”.

3 (g) CONFORMING AMENDMENTS.—Section 313(b)
4 (33 U.S.C. 1323(b)) is amended—

5 (1) by striking “(b)(1)” and inserting the fol-
6 lowing:

7 “(b) WASTEWATER FACILITIES.—

8 “(1) COOPERATION FOR USE OF WASTEWATER
9 CONTROL SYSTEMS.—”;

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

12 (3) by moving paragraphs (1) and (2) 2 ems to
13 the right.

14 (h) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect on the date of the enactment
16 of this Act and shall only apply to violations occurring
17 after such date of enactment.

18 **SEC. 307. CLEAN LAKES.**

19 Section 314 (33 U.S.C. 1324) is amended by adding
20 at the end the following:

21 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
22 is authorized to be appropriated to carry out this section
23 \$10,000,000 per fiscal year for each of fiscal years 1996
24 through 2000.”.

1 **SEC. 308. NONPOINT SOURCE MANAGEMENT PROGRAMS.**

2 (a) STATE ASSESSMENT REPORT.—

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

6 (2) INFORMATION USED IN PREPARATION.—
7 Section 319(a)(2) is amended—

8 (A) by inserting “, reviewing, and revising”
9 after “developing”; and

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

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

14 “(3) REVIEW AND REVISION.—Not later than
15 18 months after the date of the enactment of the
16 Clean Water Amendments of 1995, and every 5
17 years thereafter, the State shall review, revise, and
18 submit to the Administrator the report required by
19 this subsection.”.

20 (b) STATE MANAGEMENT PROGRAM.—

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

23 (2) CONTENTS.—Section 319(b)(2) is amend-
24 ed—

25 (A) in subparagraph (A)—

26 (i) by striking “best”;

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

3 (iii) by inserting “and measure” after
4 “practice”;

5 (B) in subparagraph (B)—

6 (i) by inserting “enforceable policies
7 and mechanisms,” after “as appropriate,”;

8 (ii) by striking “for enforcement”;
9 and

10 (iii) by striking “achieve implementa-
11 tion” and all that follows before the period
12 and inserting “manage categories,
13 subcategories, or particular nonpoint
14 sources to the degree necessary to provide
15 for a reasonable likelihood of attainment of
16 water quality standards by not later than
17 December 31, 2009 for those waters iden-
18 tified under subsection (a)(1)(A)”;

19 (C) by amending subparagraph (C) to read
20 as follows:

21 “(C) A schedule containing interim goals
22 and milestones for making reasonable progress
23 toward the attainment of standards, which may
24 be demonstrated by any combination of im-
25 provements in water quality (including biologi-

1 cal indicators), adoption of enforceable nonpoint
2 source control practices and measures, and doc-
3 umented implementation of voluntary nonpoint
4 source control practices and measures.”;

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

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

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

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

19 (c) SUBMISSION OF MANAGEMENT PROGRAMS.—
20 Paragraph (2) of section 319(c) is amended to read as
21 follows:

22 “(2) TIME PERIOD FOR SUBMISSION OF MAN-
23 AGEMENT PROGRAMS.—Each management program
24 shall be submitted to the Administrator within 30
25 months of the issuance by the Administrator of the

1 final guidance under subsection (o) and every 5
2 years thereafter. Each program submission after the
3 initial submission following the date of the enact-
4 ment of the Clean Water Amendments of 1995 shall
5 include a demonstration of reasonable further
6 progress toward the goal of attaining water quality
7 standards by not later than December 31, 2009, in-
8 cluding documentation of the degree to which the
9 State has achieved the interim goals and milestones
10 contained in the previous program submission. Such
11 demonstration shall take into account the adequacy
12 of Federal funding under this section.”.

13 (d) APPROVAL AND DISAPPROVAL OF REPORTS AND
14 MANAGEMENT PROGRAMS.—

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

17 (2) DISAPPROVAL.—Section 319(d)(2) is
18 amended—

19 (A) in subparagraph (D) by striking “are
20 not adequate” and all that follows before the
21 semicolon and inserting the following: “will not
22 result in reasonable progress toward the attain-
23 ment of applicable water quality standards
24 under section 303 as expeditiously as possible
25 but not later than December 31, 2009”; and

1 (B) in the text following subparagraph (D)
2 by striking “3 months” and inserting “6
3 months”.

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

6 (A) in paragraph (1) by striking “the re-
7 port” and inserting “a report or revised re-
8 port”;

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

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

14 (4) FAILURE OF STATE TO SUBMIT MANAGE-
15 MENT PROGRAM.—Section 319(d) is amended by
16 adding at the end the following:

17 “(4) FAILURE OF STATE TO SUBMIT MANAGE-
18 MENT PROGRAM.—If a State fails to submit a man-
19 agement program or revised management program
20 under subsection (b) or the Administrator does not
21 approve such management program, the Adminis-
22 trator shall prepare and implement a management
23 program for controlling pollution added from
24 nonpoint sources to the navigable waters within the
25 State and improving the quality of such waters in

1 accordance with subsection (b). If the Administrator
2 intends to disapprove a program submitted by a
3 State, the Administrator shall first notify the Gov-
4 ernor of the State in writing of the modifications
5 necessary to meet the requirements of this section.
6 The Administrator shall provide adequate public no-
7 tice and an opportunity for a public hearing for all
8 interested parties. If, after taking into account the
9 level of funding actually provided as compared with
10 the level authorized under subsection (j), the Admin-
11 istrator determines that a State has failed to dem-
12 onstrate reasonable further progress toward the at-
13 tainment of water quality standards as required, the
14 State shall revise its program within 12 months of
15 that determination in a manner sufficient to achieve
16 attainment of applicable water quality standards by
17 the deadline established by this Act. If a State fails
18 to make such a program revision or the Adminis-
19 trator does not approve such a revision, the Admin-
20 istrator shall prepare and implement a nonpoint
21 source management program for the State.”.

22 (e) TECHNICAL ASSISTANCE.—Section 319(f) is
23 amended by inserting “and implementation of” after “de-
24 veloping”.

25 (f) GRANT PROGRAM.—

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

3 (A) by amending the paragraph heading to
4 read as follows: “GRANTS FOR PREPARATION
5 AND IMPLEMENTATION OF REPORTS AND MAN-
6 AGEMENT PROGRAMS.—”;

7 (B) by striking “for which a report submit-
8 ted under subsection (a) and a management
9 program submitted under subsection (b) is ap-
10 proved under this section”;

11 (C) by striking “the Administrator shall
12 make grants” and inserting “the Administrator
13 may make grants under this subsection”;

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

16 (E) by striking “implementing such man-
17 agement program” and inserting “preparing a
18 report under subsection (a) and in preparing
19 and implementing a management program
20 under subsection (b)”;

21 (F) by inserting after the first sentence the
22 following: “Grants for implementation of such
23 management program may be made only after
24 such report and management program are ap-
25 proved under this section.”; and

1 (G) by adding at the end the following:
2 “The Administrator is authorized to provide
3 funds to a State if necessary to implement an
4 approved portion of a State program or to im-
5 plement a component of a federally established
6 program.”.

7 (2) FEDERAL SHARE.—Section 319(h)(3) is
8 amended—

9 (A) by striking “management program im-
10 plemented” and inserting “report prepared and
11 management program prepared and imple-
12 mented”;

13 (B) by striking “60 percent” and inserting
14 “75 percent”;

15 (C) by striking “implementing such man-
16 agement program” and inserting “preparing
17 such report and preparing and implementing
18 such management program”; and

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

21 (3) LIMITATION ON GRANT AMOUNTS.—Section
22 319(h)(4) is amended—

23 (A) by inserting before the first sentence
24 the following: “The Administrator shall estab-
25 lish, after consulting with the States, maximum

1 and minimum grants for any fiscal year to pro-
2 mote equity between States and effective
3 nonpoint source management.”; and

4 (B) by adding at the end the following:
5 “The minimum percentage of funds allocated to
6 each State shall be 0.5 percent of the amount
7 appropriated.”.

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

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

19 (5) LIMITATION ON USE OF FUNDS.—Para-
20 graph (7) of section 319(h) is amended to read as
21 follows:

22 “(7) LIMITATION ON USE OF FUNDS.—A State
23 may not use more than 70 percent of amounts from
24 grants made available to the State pursuant to this
25 section for—

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

4 “(B) assistance related to the cost of pre-
5 paring or implementing the State management
6 program;

7 “(C) providing incentive grants to individ-
8 uals to implement a site-specific water quality
9 plan in amounts not to exceed 75 percent of the
10 cost of the project from all Federal sources; and

11 “(D) land acquisition or conservation ease-
12 ments consistent with a site-specific water qual-
13 ity plan.”.

14 (6) COMPLIANCE WITH STATE MANAGEMENT
15 PROGRAM.—Paragraph (8) of section 319(h) is
16 amended to read as follows:

17 “(8) COMPLIANCE WITH STATE MANAGEMENT
18 PROGRAM.—In any fiscal year for which the Admin-
19 istrator determines that a State has not made satis-
20 factory progress in the preceding fiscal year in meet-
21 ing the schedule specified for such State under sub-
22 section (b)(2)(C), the Administrator is authorized to
23 withhold grants pursuant to this section in whole or
24 in part to the State after adequate written notice is
25 provided to the Governor of the State.”.

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

3 “(13) ALLOTMENT STUDY.—

4 “(A) STUDY.—The Administrator, in con-
5 sultation with the States, shall conduct a study
6 of whether the allocation of funds under para-
7 graph (5) appropriately reflects the costs of
8 nonpoint source control measures for different
9 nonpoint source categories and subcategories
10 and of options for better reflecting such costs in
11 the allotment of funds.

12 “(B) REPORT.—Not later than 5 years
13 after the date of the enactment of the Clean
14 Water Amendments of 1995, the Administrator
15 shall transmit to Congress a report on the re-
16 sults of the study conducted under this sub-
17 section, together with recommendations.”.

18 (g) GRANTS FOR PROTECTING GROUND WATER
19 QUALITY.—Section 319(i)(3) is amended by striking
20 “\$150,000” and inserting “\$500,000”.

21 (h) AUTHORIZATION OF APPROPRIATIONS.—Section
22 319(j) is amended—

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

24 (2) by inserting after “1991” the following: “,
25 such sums as may be necessary for each of fiscal

1 years 1992 through 1995, \$100,000,000 for fiscal
2 year 1996, \$150,000,000 for fiscal year 1997,
3 \$200,000,000 for fiscal year 1998, \$250,000,000 for
4 fiscal year 1999, and \$300,000,000 for fiscal year
5 2000”; and

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

8 (i) REPORTS OF THE ADMINISTRATOR.—

9 (1) BIENNIAL REPORTS.—Section 319(m)(1) is
10 amended—

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

13 (B) by striking “1998, and each January
14 1” and inserting “1995, and biennially”.

15 (2) CONTENTS.—Section 319(m)(2) is amend-
16 ed—

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

21 (B) in subparagraph (A) by striking “best
22 management practices” and inserting “meas-
23 ures”; and

24 (C) in subparagraph (B) by striking “best
25 management practices” and inserting “the

1 measures provided by States under subsection
2 (b)”.

3 (j) SET ASIDE FOR ADMINISTRATIVE PERSONNEL.—
4 Section 319(n) is amended by striking “less” and insert-
5 ing “more”.

6 (k) GUIDANCE ON MODEL MANAGEMENT PRACTICES
7 AND MEASURES.—Section 319 is amended by adding at
8 the end the following:

9 “(o) GUIDANCE ON MODEL MANAGEMENT PRAC-
10 TICES AND MEASURES.—

11 “(1) IN GENERAL.—The Administrator, in con-
12 sultation with appropriate Federal and State depart-
13 ments and agencies, and after providing notice and
14 opportunity for public comment, shall publish guid-
15 ance to identify model management practices and
16 measures which may be undertaken, at the discre-
17 tion of the State or appropriate entity, under a man-
18 agement program established pursuant to this sec-
19 tion.

20 “(2) PUBLICATION.—The Administrator shall
21 publish proposed guidance under this subsection not
22 later than 6 months after the date of the enactment
23 of this subsection and shall publish final guidance
24 under this subsection not later than 18 months after
25 such date of enactment. The Administrator shall pe-

1 riodically review and revise the final guidance at
2 least once every 3 years after its publication.

3 “(3) MODEL MANAGEMENT PRACTICES AND
4 MEASURES DEFINED.—For the purposes of this sub-
5 section, the term ‘model management practices and
6 measures’ means economically achievable measures
7 for the control of the addition of pollutants from
8 nonpoint sources of pollution which reflect the great-
9 est degree of pollutant reduction achievable through
10 the application of the best available nonpoint pollu-
11 tion control practices, technologies, processes, siting
12 criteria, operating methods, or other alternatives.

13 (l) INADEQUATE FUNDING.—Section 319 is amended
14 by adding at the end the following:

15 “(p) INADEQUATE FUNDING.—For each fiscal year
16 beginning after the date of the enactment of this sub-
17 section for which the total of amounts appropriated to
18 carry out this section are less than the total of amounts
19 authorized to be appropriated pursuant to subsection (j),
20 the deadline for compliance with any requirement of this
21 section, including any deadline relating to assessment re-
22 ports or State program implementation or monitoring ef-
23 forts, shall be postponed by 1 year.”.

24 (m) COASTAL NONPOINT POLLUTION CONTROL PRO-
25 GRAMS.—Section 6217(a)(1) of the Omnibus Budget Rec-

1 onciation Act of 1990 (16 U.S.C. 1455b(a)(1)) is amend-
2 ed by inserting before the period at the end of the 1st
3 sentence the following: “; except that a State that submits
4 a management program to the Secretary for approval
5 under section 306 of the Coastal Zone Management Act
6 of 1972 after the date of issuance of final guidance under
7 subsection (g) of this section shall not be required to sub-
8 mit a Coastal Nonpoint Pollution Control Program for ap-
9 proval pursuant to this subsection before the expiration
10 of the 30-month period beginning on the date on which
11 the Secretary approves such management program.”.

12 **SEC. 309. NATIONAL ESTUARY PROGRAM.**

13 (a) TECHNICAL AMENDMENT.—Section 320(a)(2)(B)
14 (33 U.S.C. 1330(a)(2)(B)) is amended to read as follows:

15 “(B) PRIORITY CONSIDERATION.—The Ad-
16 ministrator shall give priority consideration
17 under this section to Long Island Sound, New
18 York and Connecticut; Narragansett Bay,
19 Rhode Island; Buzzards Bay, Massachusetts;
20 Massachusetts Bay, Massachusetts (including
21 Cape Cod Bay and Boston Harbor); Puget
22 Sound, Washington; New York-New Jersey
23 Harbor, New York and New Jersey; Delaware
24 Bay, Delaware and New Jersey; Delaware In-
25 land Bays, Delaware; Albemarle Sound, North

1 Carolina; Sarasota Bay, Florida; San Francisco
2 Bay, California; Santa Monica Bay, California;
3 Galveston Bay, Texas; Barataria-Terrebonne
4 Bay estuary complex, Louisiana; Indian River
5 Lagoon, Florida; and Peconic Bay, New York.”.

6 (b) GRANTS.—Section 320(g)(2) (33 U.S.C.
7 1330(g)(2)) is amended by inserting “and implementation
8 monitoring” after “development”.

9 **SEC. 310. STATE WATERSHED MANAGEMENT PROGRAMS.**

10 (a) ESTABLISHMENT.—Title III (33 U.S.C. 1311–
11 1330) is amended by adding at the end the following:

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

13 “(a) DEFINITIONS.—In this section, the following
14 definitions apply:

15 “(1) ECOSYSTEM.—The term ‘ecosystem’
16 means a community of plants and animals (including
17 humans) and the environment (including surface
18 water, the ground water with which it interacts, and
19 riparian areas) upon which the community depends.

20 “(2) ENVIRONMENTAL GOALS.—The term ‘envi-
21 ronmental goals’ means the goals and more detailed
22 objectives specified by States or State-designated re-
23 sponsible entities to protect, restore, and maintain
24 water resources and aquatic ecosystems within a wa-
25 tershed, including applicable water quality standards

1 and wetlands protection goals established under this
2 Act.

3 “(3) STATE.—The term ‘State’ means any
4 State, territory, or Indian tribe described in section
5 518(e).

6 “(b) STATE WATERSHED MANAGEMENT PRO-
7 GRAM.—

8 “(1) SUBMISSION OF PROGRAM TO ADMINIS-
9 TRATOR.—A State, at any time, may submit a wa-
10 tershed management program to the Administrator
11 for approval.

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

21 “(A) The identification of the State agency
22 with primary responsibility for overseeing and
23 approving watershed management plans in gen-
24 eral.

1 “(B) The description of any responsible
2 entities (including any appropriate State agency
3 or substate agency) to be utilized in implement-
4 ing the program and a description of their re-
5 sponsibilities.

6 “(C) A description of the scope of the pro-
7 gram. In establishing the scope of the program,
8 the State may address one or more watersheds
9 concurrently or sequentially. The scope of the
10 State program may expand over time with re-
11 spect to the watersheds and issues to be ad-
12 dressed under the program.

13 “(D) Provisions for carrying out an analy-
14 sis, consistent with the established scope of the
15 program, of the problems within each watershed
16 covered under the program.

17 “(E) An identification of watershed man-
18 agement units for which management plans will
19 be developed, taking into consideration those
20 waters where water quality is threatened or im-
21 paired or otherwise in need of special protec-
22 tion. A watershed management unit identified
23 under the program may include waters and as-
24 sociated land areas in more than 1 State if the
25 Governors of the States affected jointly des-

1 designate the watershed management unit and may
2 include waters and associated lands managed or
3 owned by the Federal Government.

4 “(F) A description of the activities re-
5 quired of responsible entities (as specified under
6 subsection (f)(1)) and a description of the wa-
7 tershed plan approval process of the State.

8 “(G) Documentation of the public partici-
9 pation in development of the program and de-
10 description of the procedures that will be used for
11 public participation in the development and im-
12 plementation of watershed plans.

13 “(H) The identification of statewide envi-
14 ronmental goals that will be pursued in each
15 watershed, including, at a minimum, attainment
16 of State water quality standards and the objec-
17 tives of this Act, and, as appropriate, other
18 State objectives.

19 “(3) DISAPPROVAL PROCESS.—If the Adminis-
20 trator intends to disapprove a program of a State
21 submitted under this subsection, the Administrator
22 shall by a written notification advise the State of the
23 intent to disapprove and the reasons for disapproval.
24 If, within 30 days of receipt of such notice, a State
25 so requests, the Administrator shall conduct a public

1 hearing in the State on the intent to disapprove and
2 the reasons for such disapproval. A State may re-
3 submit a revised program that addresses the reasons
4 contained in the notification. If a State requests a
5 public hearing, the Administrator shall conduct the
6 hearing in that State and issue a final determination
7 within 240 days of receipt of the State watershed
8 management program submittal.

9 “(4) MODIFICATION OF PROGRAM.—Each State
10 with a watershed management program that has
11 been approved by the Administrator under this sec-
12 tion may, at any time, modify the watershed man-
13 agement program. Any such modification shall be
14 submitted to the Administrator and shall remain in
15 effect unless and until the Administrator determines
16 that the modified program no longer meets the re-
17 quirements of this section. In such event, the provi-
18 sions of paragraph (3) shall apply.

19 “(5) STATUS REPORTS.—Each State with a wa-
20 tershed management program that has been ap-
21 proved by the Administrator pursuant to this sub-
22 section shall, not later than 1 year after the date of
23 approval, and annually thereafter, submit to the Ad-
24 ministrator an annual watershed program summary
25 status report that includes descriptions of any modi-

1 fications to the program. The status report shall in-
2 clude a listing of requests made for watershed plan
3 development and a listing of plans prepared and
4 submitted by local or regional entities and the ac-
5 tions taken by the State on such plans including the
6 reasons for those actions. A State may use the re-
7 port to satisfy any reporting requirements under sec-
8 tions 106, 314, 319, 320, and 604(b).

9 “(c) WATERSHED AREA IN 2 OR MORE STATES.—
10 If a watershed management unit is designated to include
11 land areas in more than 1 State, the Governors of States
12 having jurisdiction over any lands within the watershed
13 management unit shall jointly determine the responsible
14 entity or entities.

15 “(d) ELIGIBLE WATERSHED MANAGEMENT AND
16 PLANNING ACTIVITIES.—In addition to activities eligible
17 to receive assistance under other sections of this Act as
18 of the date of the enactment of this subsection, the follow-
19 ing watershed management activities conducted by or on
20 behalf of the States pursuant to a watershed management
21 program that is approved by the Administrator under this
22 section shall be considered to be eligible to receive assist-
23 ance under sections 205(j), 319(h), 320, and 604(b):

24 “(1) Characterizing the waters and land uses.

1 “(2) Identifying and evaluating problems within
2 the watershed.

3 “(3) Selecting short-term and long-term goals
4 for watershed management.

5 “(4) Developing and implementing measures
6 and practices to meet identified goals.

7 “(5) Identifying and coordinating projects and
8 activities necessary to restore or maintain water
9 quality or other related environmental objectives
10 within the watershed.

11 “(6) Identifying the appropriate institutional
12 arrangements to carry out a watershed management
13 plan that has been approved or adopted by the State
14 under this section.

15 “(7) Updating the plan.

16 “(8) Conducting training and public participa-
17 tion activities.

18 “(9) Any other activity considered appropriate
19 by the Administrator.

20 “(e) PUBLIC PARTICIPATION.—Each State shall es-
21 tablish procedures to encourage the public to participate
22 in its program and in developing and implementing com-
23 prehensive watershed management plans under this sec-
24 tion. A State watershed management program shall in-
25 clude a process for public involvement in watershed man-

1 agement, to the maximum extent practicable, including the
2 formation and participation of public advisory groups dur-
3 ing State watershed program development. States must
4 provide adequate public notice and an opportunity to com-
5 ment on the State watershed program prior to submittal
6 of the program to the Administrator for approval.

7 “(f) APPROVED OR STATE-ADOPTED PLANS.—

8 “(1) MINIMUM REQUIREMENT.—A State with a
9 watershed management program that has been ap-
10 proved by the Administrator under this section may
11 approve or adopt a watershed management plan if
12 the plan satisfies the following conditions:

13 “(A) If the watershed includes waters that
14 are not meeting water quality standards at the
15 time of submission, the plan—

16 “(i) identifies the environmental ob-
17 jectives of the plan, including, at a mini-
18 mum, State water quality standards, goals
19 and objectives under this Act, and any
20 other environmental goals the responsible
21 planning entity or entities consider appro-
22 priate;

23 “(ii) identifies pollutants, stressors,
24 and sources causing the impairment of the
25 waters;

1 “(iii) identifies actions that are nec-
2 essary to achieve the environmental objec-
3 tives of the plan, including source reduc-
4 tion of pollutants to achieve any allocated
5 load reductions consistent with the require-
6 ments of section 303(d), and the priority
7 for implementing the actions;

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

12 “(v) demonstrates that water quality
13 standards will be attained as expeditiously
14 as practicable, but not later than any ap-
15 plicable deadline under this Act and that
16 all other environmental goals identified in
17 the watershed management plan will be at-
18 tained as expeditiously as practicable;

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

1 “(vii) specifies a process to monitor
2 and evaluate progress toward meeting envi-
3 ronmental goals; and

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

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

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

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

1 after consultation with the States, and after providing no-
2 tice and opportunity for public comment, shall issue guid-
3 ance on provisions that States may consider for inclusion
4 in watershed management programs and State-approved
5 or State-adopted watershed management plans under this
6 section.”.

7 (b) INCENTIVES FOR WATERSHED MANAGEMENT.—

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

11 “(q) WATERSHED MANAGEMENT.—

12 “(1) IN GENERAL.—Notwithstanding section
13 301(b)(1)(C), a permit may be issued under this sec-
14 tion with a limitation that does not meet applicable
15 water quality standards if—

16 “(A) the receiving water is in a watershed
17 with a watershed management plan that has
18 been approved pursuant to section 321;

19 “(B) the plan includes enforceable require-
20 ments under the law of a State or a political
21 subdivision of a State for nonpoint source pol-
22 lutant load reductions that, in combination with
23 point source requirements, will meet applicable
24 water quality standards under this Act before
25 the date of expiration of the plan; and

1 “(C) the point source does not have a his-
2 tory of significant noncompliance with its efflu-
3 ent limitations under a permit issued under this
4 section, as determined by the Administrator or
5 a State with authority to issue permits under
6 this section.

7 “(2) SYNCHRONIZED PERMIT TERMS.—Not-
8 withstanding subsection (b)(1)(B), the term of a
9 permit issued under this section may be extended for
10 a period of 5 years beyond the date of expiration of
11 the permit if the discharge is located in a watershed
12 management unit for which a watershed manage-
13 ment plan will be developed pursuant to section 321.

14 “(3) 10-YEAR PERMIT TERMS.—Notwithstand-
15 ing subsection (b)(1)(B), the term of a permit issued
16 under this section may be for a fixed term not ex-
17 ceeding 10 years for any point source located in a
18 watershed management unit established under sec-
19 tion 322 with respect to which a plan has been ap-
20 proved or adopted by the State if the plan provides
21 for the attainment and maintenance of water quality
22 standards (including designated uses) in the affected
23 waters, unless receiving waters do not meet water
24 quality standards due to the point source discharge.
25 If necessary, a permit issued pursuant to this para-

1 graph may be revised at any time to meet water
2 quality standards.”.

3 (2) NONPOINT SOURCE CONTROLS.—Section
4 319 (33 U.S.C. 1329) is amended by adding at the
5 end the following:

6 “(q) WATERSHED MANAGEMENT PROGRAMS.—

7 “(1) IN GENERAL.—If a State with a watershed
8 management program that has been approved by the
9 Administrator pursuant to section 321 makes a
10 showing satisfactory to the Administrator that the
11 State watershed and nonpoint source management
12 programs will provide for the protection of coastal
13 waters generally and also contains the necessary ele-
14 ments specified in paragraph (2), the State water-
15 shed program shall be deemed to be in compliance
16 with the requirements of this Act and the Coastal
17 Zone Act Reauthorization Amendments of 1990.

18 “(2) NECESSARY ELEMENTS.—The necessary
19 elements for State watershed and nonpoint source
20 management programs under paragraph (1) are as
21 follows:

22 “(A) IDENTIFYING LAND USES.—The iden-
23 tification of, and a continuing process for iden-
24 tifying, land uses which, individually or cumula-

1 tively, may cause or contribute significantly to
2 a degradation of—

3 “(i) those coastal waters where there
4 is a failure to attain or maintain applicable
5 water quality standards or protect des-
6 ignated uses, as determined by the State
7 pursuant to its water quality planning
8 processes; or

9 “(ii) those coastal waters that are
10 threatened by reasonably foreseeable in-
11 creases in pollution loadings from new or
12 expanding sources.

13 “(B) IDENTIFYING CRITICAL COASTAL
14 AREAS.—The identification of, and a continuing
15 process for identifying, critical coastal areas ad-
16 jacent to coastal waters referred to in subpara-
17 graphs (A)(i) and (A)(ii), within which any new
18 land uses or substantial expansion of existing
19 land uses shall be subject to the applicable re-
20 quirements of a watershed plan approved or
21 adopted by the State.”.

22 (4) MULTIPURPOSE GRANTS.—

23 (A) IN GENERAL.—The Administrator may
24 provide assistance to a State with a watershed
25 management program that has been approved

1 by the Administrator under section 321 in the
2 form of a multipurpose grant that would pro-
3 vide for single application, work plan and re-
4 view, matching, oversight, and end-of-year
5 closeout requirements for grant funding under
6 sections 104(b)(3), 104(g), 106, 314(b), 319,
7 320, and 604(b) of the Federal Water Pollution
8 Control Act.

9 (B) TERMS.—The Administrator may at-
10 tach terms that shall apply for more than 1
11 year to grants made pursuant to this para-
12 graph. A State that receives a grant under this
13 paragraph may focus activities funded under
14 the provisions referred to in subparagraph (A)
15 on a priority basis in a manner consistent with
16 watershed management plans approved by the
17 State under section 321(f) of the Federal Water
18 Pollution Control Act.

19 (5) EXTENSION OF REVIEW PROCESS.—Section
20 303(c)(1) (33 U.S.C. 1313(c)(1)) is amended by in-
21 sserting after “1972” the following: “or at least once
22 each 5-year period in the case of a State which is
23 implementing a watershed management program ap-
24 proved under section 321”.

1 (6) PLANNING.—Section 604(b) (33 U.S.C.
2 1384(b)) is amended by adding at the end the fol-
3 lowing: “In any fiscal year in which a State is imple-
4 menting a State watershed management program
5 approved under section 321, the State may reserve
6 up to an additional 2 percent of the sums allotted
7 to the State for such fiscal year for development of
8 watershed management plans under such program if
9 50 percent of the amount reserved under this sen-
10 tence will be made available to local entities.”.

11 (7) POLLUTANT TRANSFER OPPORTUNITIES.—

12 (A) POLLUTANT TRANSFER PILOT
13 PROJECTS.—As part of an approved watershed
14 management program, the Administrator or,
15 where appropriate, State or interstate agency
16 may allow a point source discharger to offset
17 the impact of its discharge of a pollutant by en-
18 tering into arrangements, including the pay-
19 ment of funds, for the implementation of
20 nonpoint source controls or point source con-
21 trols by another discharger through a pollution
22 reduction credits trading program established in
23 an approved watershed management plan under
24 section 321 of the Federal Water Pollution
25 Control Act, so long as appropriate safeguards

1 are included to ensure compliance with tech-
2 nology based controls and to protect the quality
3 of receiving waters.

4 (B) INCENTIVE GRANTS.—The Adminis-
5 trator shall allocate sums made available by ap-
6 propriations to carry out pollution reduction
7 credits trading programs in selected areas
8 throughout the country.

9 (C) REPORT.—Not later than 18 months
10 after the date of the enactment of this Act, the
11 Administrator shall transmit to Congress a re-
12 port on the results of the program conducted
13 under this paragraph.

14 **TITLE IV—PERMITS AND** 15 **LICENSES**

16 **SEC. 401. WASTE TREATMENT SYSTEMS.**

17 Section 402(a) is amended by adding the following
18 new paragraph:

19 “(6) For purposes of this section, waste treat-
20 ment systems, including retention ponds or lagoons
21 used to meet the requirements of this Act for con-
22 centrated animal feeding operations, are not waters
23 of the United States. An existing concentrated ani-
24 mal feeding operation that uses a natural topo-
25 graphic impoundment or structure on the effective

1 date of this Act, which is not hydrologically con-
2 nected to any other waters of the United States, as
3 a waste treatment system or wastewater retention
4 facility may continue to use that natural topographic
5 feature for waste storage regardless of its size, ca-
6 pacity, or previous use.”.

7 **SEC. 402. STORMWATER DISCHARGE PERMITS.**

8 Section 402(p) (33 U.S.C. 1342(p)) is amended to
9 read as follows:

10 “(p) MUNICIPAL AND INDUSTRIAL STORMWATER
11 DISCHARGES.—

12 “(1) GENERAL RULE.—Permits for discharges
13 composed entirely of stormwater are required under
14 this Act only for the discharges described in para-
15 graph (2). No permit shall be required under this
16 Act for any other discharge composed entirely of
17 stormwater. Such other discharges shall be subject
18 to section 319, relating to nonpoint source manage-
19 ment programs.

20 “(2) DESCRIPTIONS OF DISCHARGES FOR
21 WHICH PERMITS ARE REQUIRED.—Permits are re-
22 quired under this Act for the following stormwater
23 discharges:

1 “(A) A discharge with respect to which a
2 permit has been issued under this section before
3 February 4, 1987.

4 “(B) A discharge associated with any in-
5 dustrial activity other than—

6 “(i) a discharge that is composed en-
7 tirely of stormwater that is from a con-
8 struction activity which disturbs less than
9 5 acres of total land area and is not part
10 of a larger common plan of development or
11 sale;

12 “(ii) a discharge that is composed en-
13 tirely of stormwater that is from any coal
14 mining activity or coal mined land subject
15 to the requirements of title IV or title V of
16 the Surface Mining Control and Reclama-
17 tion Act of 1977 (30 U.S.C. 1201 et seq.);
18 or

19 “(iii) a discharge composed entirely of
20 stormwater from conveyances or systems of
21 conveyances (including pipes, conduits,
22 ditches, and channels) used for collecting
23 and conveying precipitation runoff and
24 which is not contaminated by contact with,
25 or does not come into contact with, any

1 material handling equipment or activity,
2 industrial machinery, raw material, inter-
3 mediate product, finished product, byprod-
4 uct, or waste product located on the site of
5 the industrial activity.

6 “(C) A discharge from a municipal sepa-
7 rate storm sewer system serving a population of
8 250,000 or more.

9 “(D) A discharge from a municipal sepa-
10 rate storm sewer system serving a population of
11 100,000 or more but less than 250,000.

12 “(E) A discharge for which the Adminis-
13 trator or the State, as the case may be, deter-
14 mines that the stormwater discharge contrib-
15 utes to a violation of a water quality standard
16 or is a significant contributor of pollutants to
17 waters of the United States.

18 “(3) PERMIT REQUIREMENTS.—

19 “(A) INDUSTRIAL DISCHARGES.—Permits
20 for discharges associated with industrial activity
21 shall meet all applicable provisions of this sec-
22 tion and section 301.

23 “(B) MUNICIPAL DISCHARGES.—Permits
24 for discharges from municipal separate storm
25 sewer systems—

1 “(i) may be issued on a system- or ju-
2 risdiction-wide basis;

3 “(ii) shall include a requirement to ef-
4 fectively prohibit non-stormwater dis-
5 charges into the municipal separate storm
6 sewer system;

7 “(iii) shall require cost-effective con-
8 trols to reduce the discharge of pollutants
9 to the maximum extent practicable, includ-
10 ing management practices, control tech-
11 niques and system, design and engineering
12 methods, and such other provisions as the
13 Administrator or the State determines ap-
14 propriate for the control of such pollutants;

15 “(iv) shall require reasonable progress
16 toward attainment of applicable water
17 quality standards under this Act; and

18 “(v) that are renewed after the date
19 of the enactment of this clause, shall in-
20 clude such additional requirements for the
21 implementation of cost-effective controls
22 referred to in clause (iii) as the Adminis-
23 trator or the State, in the case of a State
24 with authority to issue permits under this
25 section, determines are necessary for rea-

1 sonable progress toward the attainment or
2 maintenance of applicable water quality
3 standards under this Act.

4 In determining under this subparagraph wheth-
5 er reasonable progress has been made toward
6 the attainment of applicable water quality
7 standards under this Act, the Administrator or
8 the State, as appropriate, shall take into ac-
9 count the receipt of Federal financial assistance
10 for the implementation of cost-effective controls
11 referred to in clause (iii).

12 “(C) MUNICIPALLY OWNED INDUSTRIAL
13 FACILITIES.—The Administrator or the State
14 (in the case of a permit program approved
15 under section 402 of this Act) shall issue a con-
16 solidated permit for discharges from a storm
17 sewer system owned by a municipality and the
18 stormwater discharges from industrial sources
19 owned by the same municipality.

20 “(D) GENERAL AND GROUP PERMITS.—
21 The Administrator or the State, in the case of
22 a State with authority to issue permits under
23 this section, may, after notice and opportunity
24 for public hearing, issue general or group per-
25 mits for any discharges described in paragraph

1 (2) (other than discharges from municipal sepa-
2 rate storm sewer systems) if the Administrator
3 or the State determines that the discharges are
4 similar in nature and that application of similar
5 management measures will effectively reduce
6 pollution occurring from such discharges or if
7 the Administrator finds that the issuance of
8 general permits is otherwise appropriate.

9 “(E) COMPLIANCE WITH WATER QUALITY
10 STANDARDS.—Neither the Administrator nor
11 the State, in the case of a State with authority
12 to issue permits under this section, may re-
13 quire, in a permit issued under this section for
14 discharges from a municipal separate storm
15 sewer system described in paragraph (2), com-
16 pliance with a numeric effluent limitation or an
17 applicable water quality standard directly before
18 December 31, 2009, except to the extent nec-
19 essary for implementation of management
20 measures under the regulations issued under
21 paragraph (5).

22 “(4) PERMIT APPLICATION REQUIREMENTS.—

23 “(A) INDUSTRIAL AND LARGE MUNICIPAL
24 DISCHARGES.—Not later than 2 years after the
25 date of the enactment of this subsection, the

1 Administrator shall establish regulations setting
2 forth the permit application requirements for
3 stormwater discharges described in paragraphs
4 (2)(B) and (2)(C). Applications for permits for
5 such discharges shall be filed no later than No-
6 vember 18, 1992. Not later than November 18,
7 1993, the Administrator or the State, as the
8 case may be, shall issue or deny each such per-
9 mit. Any such permit shall provide for compli-
10 ance as expeditiously as practicable, but in no
11 event later than 3 years after the date of issu-
12 ance of such permit.

13 “(B) MEDIUM MUNICIPAL DISCHARGES.—
14 Not later than 4 years after the date of the en-
15 actment of this subsection, the Administrator
16 shall establish regulations setting forth the per-
17 mit application requirements for stormwater
18 discharges described in paragraph (2)(D). Ap-
19 plications for permits for such discharges shall
20 be filed no later than May 17, 1993. Not later
21 than May 17, 1994, the Administrator or the
22 State, as the case may be, shall issue or deny
23 each such permit. Any such permit shall provide
24 for compliance as expeditiously as practicable,

1 but in no event later than 3 years after the date
2 of issuance of such permit.

3 “(5) REGULATIONS.—Not later than May 1,
4 1996, the Administrator, in consultation with State
5 and local officials, shall propose and, not later than
6 October 1, 1997, issue final regulations for the issu-
7 ance of permits for municipal separate storm sewer
8 system discharges described in paragraphs (2)(C)
9 and (2)(D). Such regulations shall include, at a min-
10 imum, the following:

11 “(A) Methods to prohibit effectively
12 nonstormwater discharges into the municipal
13 separate storm sewer system of the permittee.

14 “(B) Information on the development and
15 implementation of management measures to re-
16 duce, to the maximum extent practicable, the
17 discharge of pollutants from such system. In
18 this subsection, the term ‘cost-effective controls’
19 means cost-effective and economically achiev-
20 able management measures for the control of
21 the addition of pollutants from a municipal sep-
22 arate storm sewer system which reflect the
23 greatest degree of pollutant reduction achiev-
24 able through the application of the best avail-
25 able storm water control practices, technologies,

1 processes, operating methods, or other alter-
2 natives, and which may take into account the
3 severity of the water quality impairment, the ef-
4 fectiveness of alternative approaches, and the
5 costs of the measures. The Administrator shall
6 establish regionally-applicable, objective per-
7 formance standards for each management
8 measure.

9 “(C) Requirements for development and
10 implementation of a municipal stormwater qual-
11 ity management program for implementation of
12 the requirements of subparagraphs (A) and
13 (B). The program shall be incorporated into the
14 permit and shall be subject to public hearing
15 and review before implementation.

16 “(D) Requirements for monitoring of the
17 waters receiving discharges described in para-
18 graphs (2)(C) and (2)(D) for the purpose of de-
19 termining under this subsection if the require-
20 ments of the permit are resulting in progress
21 toward attaining applicable water quality stand-
22 ards under this Act.

23 The Administrator shall periodically review and re-
24 vise the regulations taking into account States’ as-

1 assessments of the effectiveness of the management
2 measures being implemented under such regulations.

3 “(6) GRANTS.—

4 “(A) IN GENERAL.—The Administrator is
5 authorized to make grants to the operator of
6 any municipal storm sewer system for which a
7 permit is required under this subsection for
8 projects for the assessment of cost-effective con-
9 trols, as such term is defined by paragraph
10 5(B).

11 “(B) SELECTION OF GRANT RECIPI-
12 ENTS.—The Administrator shall select grant re-
13 cipients under this paragraph in consultation
14 with States and local governments.

15 “(C) FUNDING.—The Administrator is au-
16 thorized to use \$20,000,000 per fiscal year out
17 of amounts appropriated pursuant to section
18 319(j) for making grants under this paragraph.

19 “(D) INADEQUATE FUNDING.—If, in any
20 fiscal year, the total amount of grants made by
21 the Administrator under this paragraph totals
22 less than \$20,000,000, the period specified in
23 paragraph 3(D) in which the Administrator or
24 the State, in the case of a State with authority
25 to issue permits under this section, is prohibited

1 from requiring, in a permit issued under this
2 section for discharges from a municipal sepa-
3 rate storm sewer system described in paragraph
4 (2), direct compliance with a numeric effluent
5 limitation or an applicable water quality stand-
6 ard shall be extended by 1 year.”.

7 **SEC. 403. COMBINED SEWER OVERFLOWS.**

8 Section 402 (33 U.S.C. 1342) is amended by adding
9 at the end the following:

10 “(r) COMBINED SEWER OVERFLOWS.—

11 “(1) REQUIREMENT FOR PERMITS.—Each per-
12 mit issued pursuant to this section for a discharge
13 from a combined storm and sanitary sewer shall con-
14 form with the combined sewer overflow control policy
15 signed by the Administrator on April 11, 1994.

16 “(2) TERM OF PERMIT.—Notwithstanding any
17 compliance schedule under section 301(b), or any
18 permit limitation under section 402(b)(1)(B), the
19 Administrator (or a State with a program approved
20 under subsection (b)) may issue a permit pursuant
21 to this section for a discharge from a combined
22 storm and sanitary sewer, that includes a schedule
23 for compliance with a long-term control plan under
24 the control policy referred to in paragraph (1), for
25 a term not to exceed 15 years. Notwithstanding the

1 compliance deadline specified in the preceding sen-
2 tence, the Administrator (or a State with a program
3 approved under subsection (b)) may, on request of
4 an owner or operator of a combined storm and sani-
5 tary sewer, extend the period of compliance beyond
6 the date specified if the Administrator (or the State)
7 determines that compliance by the date is not within
8 the economic capability of the owner or operator or
9 if the Administrator (or the State) determines that
10 an extension is otherwise appropriate.

11 “(3) SAVINGS CLAUSE.—Any consent decree or
12 court order issued before the date of the enactment
13 of this subsection by a United States district court
14 establishing any deadlines, schedules, or timetables
15 for the construction of treatment works for control
16 of any discharge from a municipal combined sewer
17 system shall be modified to extend such deadlines,
18 schedules, or timetables to conform with the require-
19 ments of this subsection.”.

20 **SEC. 404. INTAKE CREDITS.**

21 Section 402 (33 U.S.C. 1342) is further amended by
22 adding at the end the following:

23 “(s) INTAKE CREDITS.—

24 “(1) IN GENERAL.—The permit program estab-
25 lished by the Administrator under this section, and

1 any State permit program approved under this sec-
2 tion, including any program for implementation
3 under section 118(c)(2) or any program for indus-
4 trial users under section 307(b), shall provide that
5 an owner or operator of a point source subject to a
6 permit under this Act will not be required to remove
7 or reduce the level of pollutants in a discharge if
8 such pollutants are present in or caused by the in-
9 take waters for such point source.

10 “(2) EFFLUENT LIMITATIONS.—In establishing
11 effluent limitations applicable to a point source in a
12 permit under a program specified in paragraph (1),
13 the permitting authority shall provide for the follow-
14 ing:

15 “(A) If a point source uses intake water
16 containing a pollutant and the mass of such
17 pollutant in the discharge is not significantly
18 greater than the mass of such pollutant in the
19 intake water, such point source shall not have
20 a water quality-based effluent limitation for
21 such pollutant.

22 “(B) If a point source uses intake water
23 containing a pollutant and the mass of such
24 pollutant in the discharge is significantly great-
25 er than the mass of such pollutant in the intake

1 water, an effluent limitation for that pollutant
2 shall not require removal of more of the pollutant
3 than the difference between the mass of the
4 pollutant that would otherwise be in the discharge
5 and the mass of the pollutant in the intake
6 water. Any effluent limitations that are
7 imposed for such pollutant shall not require the
8 owner or operator of the point source to treat
9 its effluent to levels below the background level
10 of the substance found in the receiving water
11 body.

12 “(C) Any effluent limitations shall provide
13 full credit for the presence of the substance in
14 the intake water (or where caused by the intake
15 water) whether such effluent limitation is based
16 on an effluent guideline under section 304(b) or
17 a water quality standard for the receiving body
18 under section 303.”.

19 **SEC. 405. BENEFICIAL USE OF BIOSOLIDS.**

20 Section 405(g) (33 U.S.C. 1345(g)) is amended—

21 (1) in the first sentence of paragraph (1)—

22 (A) by inserting “(also referred to as
23 ‘biosolids’)” after “sewage sludge”; and

24 (B) by inserting “building materials,” after
25 “agricultural and horticultural uses,”;

1 (2) in paragraph (1) by adding at the end the
2 following: “Not later than January 1, 1997, and
3 after providing notice and opportunity for public
4 comment, the Administrator shall issue guidance on
5 the beneficial use of sewage sludge.”; and

6 (3) in paragraph (2) by striking “September
7 30, 1986,” and inserting “September 30, 1995,”.

8 **TITLE V—GENERAL PROVISIONS**

9 **SEC. 501. CONSULTATION WITH STATES.**

10 Section 501 (33 U.S.C. 1361) is amended by adding
11 the following new subsection:

12 “(g) The Administrator shall consult with and sub-
13 stantially involve State governments and their representa-
14 tive organizations and, to the extent that they participate
15 in the administration of this Act, tribal and local govern-
16 ments, in the Agency’s decisionmaking, priority setting,
17 policy and guidance development, and implementation
18 under this Act and such activities shall be deemed consist-
19 ent with the Federal Advisory Committee Act. The Admin-
20 istrator shall strive to enhance the capacity of State, trib-
21 al, and local governments to fulfill their respective roles
22 under this Act.”.

23 **SEC. 502. OIL TYPE DIFFERENTIATION.**

24 Section 511 (33 U.S.C. 1371) is amended by adding
25 at the end the following:

1 “(e) OIL TYPE DIFFERENTIATION.—In promulgating
2 any rule or establishing any interpretation, guideline,
3 standard, or criteria for oil and grease under this Act or
4 the Oil Pollution Act of 1990 (Public Law 101–380), the
5 President or head of any agency shall—

6 “(1) differentiate animal fats and vegetable oils
7 from other oils, including petroleum-based oils; and

8 “(2) consider differences in the physical, chemi-
9 cal, biological, or other properties and environmental
10 effects of animal fats and vegetable oils from those
11 other oils.”.

12 **SEC. 503. NEEDS ESTIMATE.**

13 Section 516(b)(1) (33 U.S.C. 1375(b)(1)) is amend-
14 ed—

15 (1) in the first sentence by striking “biennially
16 revised” and inserting “quadrennially revised”; and

17 (2) in the second sentence by striking “Feb-
18 ruary 10 of each odd numbered year” and inserting
19 “December 31, 1997, and December 31 of every 4th
20 calendar year thereafter”.

21 **SEC. 504. GENERAL PROGRAM AUTHORIZATIONS.**

22 Section 517 (33 U.S.C. 1376) is amended—

23 (1) by striking “and” before “\$135,000,000”;
24 and

1 (2) by inserting before the period at the end the
2 following: “, and such sums as may be necessary for
3 each of fiscal years 1991 through 2000.”.

4 **SEC. 505. ADEQUATELY FUNDED MANDATES.**

5 Title V (33 U.S.C. 1361–1377) is amended by adding
6 at the end the following:

7 **“SEC. 520. ADEQUATELY FUNDED MANDATES.**

8 “(a) REQUIREMENTS PRIOR TO ISSUANCE OF REGU-
9 LATIONS.—Notwithstanding any other provision of law,
10 the Administrator shall conduct, prior to issuing any pro-
11 posed or final regulation or other requirement pursuant
12 to this Act, the following:

13 “(1) An analysis of the direct and indirect costs
14 for State and local governments to implement and
15 comply with the requirement in the 5-year period
16 following implementation of the requirement.

17 “(2) An estimate of the amounts that will be
18 authorized to be appropriated for providing Federal
19 financial assistance for implementation of and com-
20 pliance with the requirement for such 5-year period.

21 “(3) An estimate of the amounts that will be
22 appropriated for providing such Federal financial as-
23 sistance for such 5-year period based on funding lev-
24 els adopted as part of a concurrent resolution setting

1 forth the congressional budget of the United States
2 Government.

3 “(4) An assessment of the availability of other
4 sources of funding for State and local governments
5 to implement and comply with the requirement in
6 such 5-year period.

7 “(5) An estimate of the amounts that will be
8 authorized to be appropriated for providing Federal
9 financial assistance for implementation and compli-
10 ance with the requirement for the fiscal year during
11 which the requirement is to be implemented and the
12 2 preceding fiscal years.

13 “(6) An estimate of the amounts that will be
14 appropriated for providing such Federal financial as-
15 sistance for the fiscal year during which the require-
16 ment is to be implemented and the 2 preceding fiscal
17 years.

18 “(7) A certification that the amounts that will
19 be appropriated for providing such Federal financial
20 assistance as estimated pursuant to paragraph (6)
21 exceed 90 percent of the costs for State and local
22 governments to implement and comply with the re-
23 quirement as determined pursuant to paragraph (1).

24 “(b) REPORTS.—If the Administrator does not make
25 a certification with respect to a requirement under sub-

1 section (a)(7), the Administrator shall transmit to the
2 Committee on Transportation and Infrastructure of the
3 House of Representatives and the Committee on Environ-
4 ment and Public Works of the Senate a report explaining
5 the reasons for not making such certification and the like-
6 ly impacts of not adequately funding State and local gov-
7 ernmental efforts to comply with such requirement.

8 “(c) EFFECTIVE DATE.—This section shall apply to
9 any proposed or final regulation or other requirement is-
10 sued pursuant to this Act after the date of the enactment
11 of this section.”.

12 **TITLE VI—STATE WATER POLLU-**
13 **TION CONTROL REVOLVING**
14 **FUNDS**

15 **SEC. 601. WATER USE EFFICIENCY MEASURES.**

16 (a) GENERAL AUTHORITY FOR CAPITALIZATION
17 GRANTS.—Section 601(a) (33 U.S.C. 1381(a)) is amend-
18 ed by inserting after “publicly owned” the following: “and
19 for implementation of water use efficiency measures whose
20 principal purpose is improving or protecting water qual-
21 ity”.

22 (b) PROJECT ELIGIBILITY.—Section 603(c) (33
23 U.S.C. 1383(c)) is amended by inserting after “section
24 212 of this Act)” the following: “and for implementation

1 of water use efficiency measures whose principal purpose
2 is improving or protecting water quality”.

3 **SEC. 602. GUIDANCE FOR SMALL SYSTEMS.**

4 Section 602 (33 U.S.C. 1382) is amended by adding
5 at the end the following new subsection:

6 “(c) GUIDANCE FOR SMALL SYSTEMS.—

7 “(1) SIMPLIFIED PROCEDURES.—Not later than
8 1 year after the date of the enactment of this sub-
9 section, the Administrator shall assist the States in
10 establishing simplified procedures for small systems
11 to obtain assistance under this title.

12 “(2) PUBLICATION OF MANUAL.—Not later
13 than 1 year after the date of the enactment of this
14 subsection, and after providing notice and oppor-
15 tunity for public comment, the Administrator shall
16 publish a manual to assist small systems in obtain-
17 ing assistance under this title and publish in the
18 Federal Register notice of availability of the manual.

19 “(3) SMALL SYSTEM DEFINED.—For purposes
20 of this title, the term ‘small system’ means a system
21 for which a municipality or intermunicipal, inter-
22 state, or State agency seeks assistance under this
23 title and which serves a population of 20,000 or
24 less.”.

1 **SEC. 603. TYPES OF ASSISTANCE.**

2 (a) EXTENDED REPAYMENT PERIOD FOR HARDSHIP
3 COMMUNITIES.—Section 603(d)(1) (33 U.S.C.
4 1383(d)(1)) is amended—

5 (1) in subparagraph (A) by inserting after “20
6 years” the following: “or, in the case of a disadvan-
7 taged community, the lesser of 30 years or the ex-
8 pected life of the project to be financed with the pro-
9 ceeds of the loan”; and

10 (2) in subparagraph (B) by striking “not later
11 than 20 years after project completion” and insert-
12 ing “upon the expiration of the term of the loan”.

13 (b) TECHNICAL AND PLANNING ASSISTANCE FOR
14 SMALL SYSTEMS.—Section 603(d) (33 U.S.C. 1383(d)) is
15 amended—

16 (1) by striking “and” at the end of paragraph
17 (6);

18 (2) by striking the period at the end of para-
19 graph (7) and inserting “; and”; and

20 (3) by adding at the end the following new
21 paragraph:

22 “(8) to provide to small systems technical and
23 planning assistance and assistance in financial man-
24 agement, user fee analysis, budgeting, capital im-
25 provement planning, facility operation and mainte-
26 nance, repair schedules, and other activities to im-

1 prove wastewater treatment plant operations; except
2 that such amounts shall not exceed 2 percent of all
3 grant awards to such fund under this title.”.

4 (c) INTEREST RATES.—Section 603 is further
5 amended by adding at the end the following new sub-
6 sections:

7 “(i) INTEREST RATES.—In any case in which a State
8 makes a loan pursuant to subsection (d)(1) to a disadvan-
9 tagged community, the State may charge a negative inter-
10 est rate of not to exceed 2 percent to reduce the unpaid
11 principal of the loan.

12 “(j) DISADVANTAGED COMMUNITY DEFINED.—As
13 used in this section, the term ‘disadvantaged community’
14 means the service area of a publicly owned treatment
15 works with respect to which the average annual residential
16 sewage treatment charges for a user of the treatment
17 works meet affordability criteria established by the State
18 in which the treatment works is located (after providing
19 for public review and comment) in accordance with guide-
20 lines to be established by the Administrator, in coopera-
21 tion with the States.”.

22 **SEC. 604. ALLOTMENT OF FUNDS.**

23 (a) IN GENERAL.—Section 604(a) (33 U.S.C.
24 1384(a)) is amended to read as follows:

1 “(a) FORMULA FOR FISCAL YEARS 1996–2000.—
 2 Sums authorized to be appropriated pursuant to section
 3 607 for each of fiscal years 1996, 1997, 1998, 1999, and
 4 2000 shall be allotted for such year by the Administrator
 5 not later than the 10th day which begins after the date
 6 of the enactment of the Clean Water Amendments of
 7 1995. Sums authorized for each such fiscal year shall be
 8 allotted in accordance with the following table:

“States:	Percentage of sums authorized:
Alabama	0.7736
Alaska	0.2500
Arizona	1.1526
Arkansas	0.3853
California	9.3957
Colorado	0.6964
Connecticut	1.3875
Delaware	0.2500
District of Columbia	0.3203
Florida	3.4696
Georgia	2.0334
Hawaii	0.2629
Idaho	0.2531
Illinois	5.6615
Indiana	3.1304
Iowa	0.6116
Kansas	0.8749
Kentucky	1.3662
Louisiana	1.0128
Maine	0.6742
Maryland	1.6701
Massachusetts	4.3755
Michigan	3.8495
Minnesota	1.3275
Mississippi	0.6406
Missouri	1.7167
Montana	0.2500
Nebraska	0.4008
Nevada	0.2500
New Hampshire	0.4791
New Jersey	4.7219
New Mexico	0.2500
New York	14.7435
North Carolina	2.5920
North Dakota	0.2500
Ohio	4.9828

“States:	Percentage of sums authorized:
Oklahoma	0.6273
Oregon	1.2483
Pennsylvania	4.2431
Rhode Island	0.4454
South Carolina	0.7480
South Dakota	0.2500
Tennessee	1.4767
Texas	4.6773
Utah	0.2937
Vermont	0.2722
Virginia	2.4794
Washington	2.2096
West Virginia	1.4346
Wisconsin	1.4261
Wyoming	0.2500
Puerto Rico	1.0866
Northern Marianas	0.0308
American Samoa	0.0908
Guam	0.0657
Palau	0.1295
Virgin Islands	0.0527.”.

1 (b) CONFORMING AMENDMENT.—Section 604(c)(2)
2 is amended by striking “title II” and inserting “this title”.

3 **SEC. 605. AUTHORIZATION OF APPROPRIATIONS.**

4 Section 607 (33 U.S.C. 1387(a)) is amended—

5 (1) by striking “and” at the end of paragraph
6 (4);

7 (2) by striking the period at the end of para-
8 graph (5) and inserting a semicolon; and

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

10 “(6) such sums as may be necessary for fiscal
11 year 1995;

12 “(7) \$2,000,000,000 for fiscal year 1996;

13 “(8) \$2,000,000,000 for fiscal year 1997;

14 “(9) \$2,000,000,000 for fiscal year 1998;

1 “(10) \$2,000,000,000 for fiscal year 1999; and
2 “(11) \$2,000,000,000 for fiscal year 2000.”.

3 **TITLE VII—MISCELLANEOUS**
4 **PROVISIONS**

5 **SEC. 701. FUTURE FUNDING OPTIONS FOR INFRASTRUC-**
6 **TURE PROJECTS.**

7 (a) **STUDY.**—The Administrator shall conduct a
8 study to identify and examine future funding options for
9 financing infrastructure projects under the Federal Water
10 Pollution Control Act.

11 (b) **REPORT.**—Not later than 1 year after the date
12 of the enactment of this Act, the Administrator shall
13 transmit to Congress a report containing the results of
14 the study conducted under subsection (a).

15 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There is
16 authorized to be appropriated to carry out this section
17 \$100,000 for fiscal year 1996.

18 **SEC. 702. TECHNICAL AMENDMENTS.**

19 (a) **SECTION 118.**—Section 118(c)(1)(A) (33 U.S.C.
20 1268(c)(1)(A)) is amended by striking the last comma.

21 (b) **SECTION 120.**—Section 120(d) (33 U.S.C.
22 1270(d)) is amended by striking “(1)”.

23 (c) **SECTION 204.**—Section 204(a)(3) (33 U.S.C.
24 1284(a)(3)) is amended by striking the final period and
25 inserting a semicolon.

1 (d) SECTION 205.—Section 205 (33 U.S.C. 1285) is
2 amended—

3 (1) in subsection (c)(2) by striking “and 1985”
4 and inserting “1985 , and 1986”;

5 (2) in subsection (c)(2) by striking “through
6 1985” and inserting “through 1986”;

7 (3) in subsection (g)(1) by striking the period
8 following “4 per centum”; and

9 (4) in subsection (m)(1)(B) by striking “this”
10 and inserting “such”.

11 (e) SECTION 208.—Section 208 (33 U.S.C. 1288) is
12 amended—

13 (1) in subsection (h)(1) by striking “designed”
14 and inserting “designated”; and

15 (2) in subsection (j)(1) by striking “September
16 31, 1988” and inserting “September 30, 1988”.

17 (f) SECTION 301.—Section 301(j)(1)(A) (33 U.S.C.
18 1311(j)(1)(A)) is amended by striking “that” the first
19 place it appears and inserting “than”.

20 (g) SECTION 309.—Section 309(d) (33 U.S.C.
21 1319(d)) is amended by striking the second comma follow-
22 ing “Act by a State”.

23 (h) SECTION 311.—Section 311 (33 U.S.C. 1321) is
24 amended—

1 (1) in subsection (b) by moving paragraph (12)
2 (including subparagraphs (A), (B) and (C)) 2 ems
3 to the right; and

4 (2) in subsection (h)(2) by striking “The” and
5 inserting “the”.

6 (i) SECTION 404.—Section 404(s)(3) (33 U.S.C.
7 1344(s)(3)) is amended by striking “acton” and inserting
8 “action”.

9 (j) SECTION 505.—Section 505(f) (33 U.S.C.
10 1365(f)) is amended by striking the last comma.

11 (k) SECTION 516.—Section 516 (33 U.S.C. 1375) is
12 amended by redesignating subsection (g) as subsection (f).

13 (l) SECTION 518.—Section 518(f) (33 U.S.C.
14 1377(f)) is amended by striking “(d)” and inserting “(e)”.

15 **TITLE VIII—WETLANDS CON-**
16 **SERVATION AND MANAGE-**
17 **MENT**

18 **SEC. 801. SHORT TITLE.**

19 This title may be cited as the “Comprehensive Wet-
20 lands Conservation and Management Act of 1995”.

21 **SEC. 802. FINDINGS AND STATEMENT OF PURPOSE.**

22 (a) FINDINGS.—Congress finds that—

23 (1) wetlands play an integral role in maintain-
24 ing the quality of life through material contributions
25 to our national economy, food supply, water supply

1 and quality, flood control, and fish, wildlife, and
2 plant resources, and thus to the health, safety,
3 recreation and economic well-being of citizens
4 throughout the Nation;

5 (2) wetlands serve important ecological and nat-
6 ural resource functions, such as providing essential
7 nesting and feeding habitat for waterfowl, other
8 wildlife, and many rare and endangered species, fish-
9 eries habitat, the enhancement of water quality, and
10 natural flood control;

11 (3) much of the Nation's resource has sustained
12 significant degradation, resulting in the need for ef-
13 fective programs to limit the loss of ecologically sig-
14 nificant wetlands and to provide for long-term res-
15 toration and enhancement of the wetlands resource
16 base;

17 (4) most of the loss of wetlands in coastal Lou-
18 isiana is not attributable to human activity;

19 (5) because 75 percent of the Nation's wetlands
20 in the lower 48 States are privately owned and be-
21 cause the majority of the Nation's population lives
22 in or near wetlands areas, an effective wetlands con-
23 servation and management program must reflect a
24 balanced approach that conserves and enhances im-
25 portant wetlands values and functions while observ-

1 ing private property rights, recognizing the need for
2 essential public infrastructure, such as highways,
3 ports, airports, sewer systems, and public water sup-
4 ply systems, and providing the opportunity for sus-
5 tained economic growth;

6 (6) while wetlands provide many varied eco-
7 nomic and environmental benefits, they also present
8 health risks in some instances where they act as
9 breeding grounds for insects that are carriers of
10 human and animal diseases; and

11 (7) the Federal permit program established
12 under section 404 of the Federal Water Pollution
13 Control Act was not originally conceived as a wet-
14 lands regulatory program and is insufficient to en-
15 sure that the Nation's wetlands resource base will be
16 conserved and managed in a fair and environ-
17 mentally sound manner.

18 (b) PURPOSE.—The purpose of this Act is to estab-
19 lish a new Federal wetlands regulatory program—

20 (1) to assert Federal regulatory jurisdiction
21 over a broad category of specifically identified activi-
22 ties that result in the degradation or loss of wet-
23 lands;

24 (2) to account for variations in wetlands values
25 or functions in determining the character and extent

1 of regulation of activities occurring in wetlands
2 areas;

3 (3) to provide sufficient regulatory incentives
4 for conservation, restoration, or enhancement activi-
5 ties;

6 (4) to encourage conservation of resources on
7 an ecosystem basis to the fullest extent practicable;
8 and

9 (5) to protect public safety and balance public
10 and private interests in determining the conditions
11 under which activity in wetlands areas may occur.

12 **SEC. 803. WETLANDS CONSERVATION AND MANAGEMENT.**

13 Title IV of the Federal Water Pollution Control Act
14 (33 U.S.C. 1341 et seq.) is amended by striking section
15 404 and inserting the following new section:

16 **“SEC 404. PERMITS FOR ACTIVITIES IN WETLANDS OR WA-
17 TERS OF THE UNITED STATES.**

18 “(a) PROHIBITED ACTIVITIES.—(1) No person shall
19 undertake an activity in wetlands or waters of the United
20 States as described in paragraph (2) of this subsection un-
21 less such activity is undertaken pursuant to a permit is-
22 sued by the Secretary or is otherwise authorized under
23 this section.

24 “(2) For purposes of this section, the term ‘activity
25 in wetlands or waters of the United States’ means—

1 “(A) the discharge of dredged or fill material
2 into waters of the United States, including wetlands
3 at a specific disposal site; or

4 “(B) the draining, channelization, or excavation
5 of wetlands.

6 “(3) For purposes of this section, the term—

7 “(A) ‘wetlands’ means those lands that meet
8 the criteria for delineation of lands as wetlands set
9 forth in paragraph (2) of subsection (g);

10 “(B) ‘Secretary’ means the Secretary of the
11 Army; and

12 “(C) ‘Director’ means the Director of the
13 United States Fish and Wildlife Service.

14 “(b) AUTHORIZED ACTIVITIES.—(1) The Secretary is
15 authorized to issue permits authorizing activities described
16 in subsection (a)(2) of this section in accordance with the
17 requirements of this section.

18 “(2) Activities described in paragraph (2) of sub-
19 section (a) may be undertaken without a permit from the
20 Secretary if those activities are authorized under sub-
21 sections (e) (5) or (6) or are exempt from the require-
22 ments of this section under subsection (f) or other provi-
23 sions of this section.

24 “(c) WETLANDS CLASSIFICATION.—(1) Any person
25 seeking to undertake activities in wetlands for which a per-

1 mit is required under subsection (b) shall make application
2 to the Secretary identifying the site of such activity and
3 requesting that the Secretary determine, in accordance
4 with paragraph (3) of this subsection, the classification
5 of the wetlands in which such activity is proposed to occur.
6 The applicant may also provide such additional informa-
7 tion regarding such proposed activity as may be necessary
8 or appropriate for purposes of determining the classifica-
9 tion of such wetlands or whether and under what condi-
10 tions the proposed activity may be permitted to occur.

11 “(2)(A) Except as provided in subparagraph (B) of
12 this paragraph, within 90 days following the receipt of an
13 application under paragraph (1), the Secretary shall pro-
14 vide notice to the applicant of the classification of the wet-
15 lands that are the subject of such application and shall
16 state in writing the basis for such classification. The clas-
17 sification of the wetlands that are the subject of the appli-
18 cation shall be determined by the Secretary in accordance
19 with the requirements for classification of wetlands
20 under paragraphs (3) and (5).

21 “(B) In the case of an application proposing activities
22 located in wetlands that are the subject of an advance clas-
23 sification under subsection (h), the Secretary shall provide
24 notice to the applicant of such classification within thirty
25 days following the receipt of such application, and shall

1 provide an opportunity for review of such classification
2 under paragraphs (4) and (5) of this subsection.

3 “(3) Upon application under this subsection, the Sec-
4 retary shall—

5 “(A) classify as type A wetlands those wetlands
6 that are of critical significance to the long-term con-
7 servation of the ecosystem of which such wetlands
8 are a part and which meet the following require-
9 ments—

10 “(i) such wetlands serve critical wetlands
11 functions, including the provision of critical
12 habitat for a concentration of avian, aquatic, or
13 wetland dependent wildlife;

14 “(ii) such wetlands consist of or may be a
15 portion of ten or more contiguous acres and
16 have an inlet or outlet for relief of water flow;
17 except that this requirement shall not operate
18 to preclude the classification as type A wetlands
19 lands containing prairie pothole features, playa
20 lakes, or vernal pools if such lands otherwise
21 meet the requirements for type A classification
22 under this paragraph;

23 “(iii) there exists a scarcity within the wa-
24 tershed or aquatic ecosystem of identified eco-
25 logical functions served by such wetlands such

1 that the use of such wetlands for activities de-
2 scribed in subsection (a) would seriously jeop-
3 ardize the availability of these identified wet-
4 lands functions;

5 “(iv) there is no overriding public interest
6 in the use of such wetlands for purposes other
7 than conservation; and

8 “(v) the nature and scope of wetlands
9 functions are such that minimization and com-
10 pensation are not feasible means for conserving
11 wetlands values and functions;

12 “(B) classify as type B wetlands those wetlands
13 that provide habitat for a significant population of
14 avian, aquatic or wetland dependent wildlife, or pro-
15 vide other significant wetlands functions including
16 significant enhancement or protection of water qual-
17 ity, or significant natural flood control; and

18 “(C) classify as type C wetlands all wetlands
19 that—

20 “(i) serve limited wetlands functions;

21 “(ii) serve marginal wetlands functions but
22 which exist in such abundance that regulation
23 of activities in such wetlands is not necessary
24 for conserving important wetlands values and
25 functions;

1 “(iii) are prior converted cropland;

2 “(iv) are fastlands; or

3 “(v) are wetlands within industrial com-
4 plexes or other intensely developed areas that
5 do not serve significant wetlands functions as a
6 result of such location.

7 “(4) Within 30 days of receipt of notice of an advance
8 classification by the Secretary under paragraph (2)(B) of
9 this subsection, an applicant may request the Secretary
10 to make a de novo determination of the classification of
11 wetlands that are the subject of such notice. Such de novo
12 determination shall be made by the Secretary in consulta-
13 tion with the Director. The Secretary may sustain an ad-
14 vance classification made by the Director or may modify
15 such classification if the Secretary determines, upon exam-
16 ination of all relevant information submitted by the appli-
17 cant or otherwise available to the Secretary (including, if
18 appropriate, an on-the-ground-examination), that—

19 “(A) the lands involved do not meet the stand-
20 ards and criteria for delineating wetlands set forth
21 in paragraph (2) of subsection (g);

22 “(B) the weight of relevant information does
23 not support the determination of the advance classi-
24 fication with respect to the specific wetlands in-
25 volved;

1 “(C) the factual basis for such advance classi-
2 fication is no longer valid; except that such change
3 in factual circumstances has not been caused by ac-
4 tivities undertaken without authorization by the Sec-
5 retary as may have been required under this section;
6 or

7 “(D) the limitations on uses of the specific wet-
8 lands involved that would be imposed by the Sec-
9 retary under the requirements of this section would
10 effectively preclude reasonable economic use of the
11 wetlands.

12 “(5) In the event that the Secretary delegates author-
13 ity to determine the classification of wetlands under para-
14 graphs (3) and (4), the Secretary shall, by rule, provide
15 for a right of appeal to the Secretary or his designee of
16 the classification of wetlands under paragraph (3) or the
17 de novo determination of a classification under paragraph
18 (4).

19 “(d) COMPENSATION FOR LANDOWNERS.—(1) Any
20 person (including a State or political subdivision thereof)
21 who owns an interest in lands that have been classified
22 as type A wetlands by the Secretary under subsection (c)
23 or by the Director under subsection (h) may, within 2
24 years of receipt of actual notice of such classification (or
25 within 2 years following a de novo determination of such

1 classification), notify the Secretary and the Director that
2 such person is electing to seek compensation for the fair
3 market value of such interests in lands at the time of such
4 classification, in accordance with the requirements of this
5 section. Fair market value may include reasonable attor-
6 neys fees and shall be calculated without regard to any
7 diminution in value resulting from the applicability of this
8 section.

9 “(2) Immediately upon receipt by the Secretary and
10 the Director of notification of election to seek compensa-
11 tion under paragraph (1), the Director shall enter into
12 good faith negotiations with the owner for purposes of de-
13 termining the value of the interests in lands that have
14 been classified as type A wetlands. Within 3 months after
15 receipt of the notice of election by the landowner under
16 paragraph (1), the Director shall make an offer of reason-
17 able compensation to the owner.

18 “(3) Within 6 years of the date an offer for com-
19 pensation is made under paragraph (2), the owner shall,
20 in his discretion—

21 “(A) accept such offer of compensation;

22 “(B) file a claim for determination of value of
23 compensation with the United States Court of Fed-
24 eral Claims; or

1 “(C) advise the Director and the Secretary that
2 he elects to retain title to such wetlands and elects
3 not to receive compensation for the taking of land
4 under this subsection.

5 Failure to provide notice in accordance with this para-
6 graph shall be deemed an election not to receive compensa-
7 tion under this subsection.

8 “(4) Upon acceptance of an offer for compensation
9 or the filing of a claim for compensation under paragraph
10 (3), the classification as type A wetlands of the wetlands
11 that are the subject of such offer or claim shall be binding
12 upon the owner and any successor in interest, and the title
13 to such lands shall pass to the United States. The classi-
14 fication of such lands as type A wetlands under this para-
15 graph shall constitute a taking by the United States of
16 the owner’s interests in such lands and shall be compen-
17 sable under the provisions of this subsection.

18 “(5) A taking under this subsection shall be deemed
19 to be a taking of surface interests in lands only or water
20 rights allocated under State law; except that—

21 “(A) if the Secretary determines that the explo-
22 ration for or development of oil and gas or mineral
23 interests is not compatible with conservation of the
24 surface interests in lands that have been classified
25 as type A wetlands located above such oil and gas

1 or mineral interests (or located adjacent to such oil
2 and gas or mineral interests where such adjacent
3 lands are necessary to provide reasonable access to
4 such interests), the Secretary may classify such oil
5 and gas or mineral interests as type A wetlands and
6 notify the owner of such interests that the owner
7 may elect to receive compensation for such interests
8 under paragraph (1); and

9 “(B) the failure to provide reasonable access to
10 oil and gas or mineral interests located beneath or
11 adjacent to surface interests of type A wetlands shall
12 be deemed a taking of such oil and gas or mineral
13 interests.

14 “(6) The United States Court of Federal Claims shall
15 have jurisdiction—

16 “(A) to determine the value of interests taken
17 and the fair compensation required under this sub-
18 section and the Constitution of the United States;

19 “(B) in case of oil and gas or mineral interests,
20 to require the United States to provide reasonable
21 access in, across, or through lands that may be the
22 subject of a taking under this subsection solely for
23 the purpose of undertaking activity necessary to de-
24 termine the value of the interests taken; and

1 “(C) to provide other equitable remedies
2 deemed appropriate.

3 “(7) Any judgment rendered under paragraph (6)
4 may be executed, at the election of the landowner, no later
5 than two years after the date such judgment is rendered.
6 The landowner may, prior to the execution of such judg-
7 ment, enter into an agreement with the United States for
8 satisfaction of such judgment through a crediting of tax
9 benefits, acquisition of interests in oil and gas or minerals,
10 an exchange of interests in lands with the United States
11 or other means of compensation.

12 “(8)(A) The remedies for taking of interests in lands
13 under this subsection shall not be construed to preempt,
14 alter, or limit the availability of other remedies for the
15 taking of interests in lands under the Constitution of the
16 United States or State law, including the taking of rights
17 to the use of water allocated under State law or the taking
18 of interest in lands by denial of a permit under this sec-
19 tion.

20 “(B) Any award of compensation for the taking of
21 interest in lands by denial of a permit under this section
22 shall be based upon the fair market value of such interests
23 in lands at the time of such taking. Fair market value
24 may include reasonable attorneys fees and shall be cal-

1 culated without regard to any diminution in value result-
2 ing from the applicability of this section.

3 “(9) Interests in lands acquired by the United States
4 under this subsection shall be managed by the United
5 States Fish and Wildlife Service as a part of the National
6 Wildlife Refuge System unless otherwise provided by the
7 Director or by Act of Congress.

8 “(10) No action taken under this subsection shall be
9 construed to alter or supersede requirements governing
10 use of water applicable under State law.

11 “(e) REQUIREMENTS APPLICABLE TO PERMITTED
12 ACTIVITY.—(1) Following the determination of wetlands
13 classification pursuant to subsection (c), and after compli-
14 ance with the requirements of subsection (d) if applicable,
15 the Secretary may issue or deny permits for authorization
16 to undertake activities in wetlands, in accordance with the
17 requirements of this subsection.

18 “(2) The Secretary shall deny a permit authorizing
19 activities in type A wetlands unless the Secretary deter-
20 mines that—

21 “(A) such an activity can be undertaken with
22 minimal alteration or surface disturbance;

23 “(B) there are overriding public interest con-
24 cerns that require use of the lands for purposes
25 other than conservation, including—

1 “(i) the likelihood that efforts to mitigate
2 adverse impacts through avoidance and mini-
3 mization will protect, enhance, or increase criti-
4 cal wetlands values and functions;

5 “(ii) the lack of practical and feasible
6 means for accomplishing the project purpose at
7 an alternative location; or

8 “(iii) the proposed use of the land will en-
9 hance aviation safety or is necessary to prevent
10 an airport hazard; or

11 “(C) the proposed use of the land, taking into
12 account all proposed mitigation, will result in overall
13 environmental benefits, including the prevention of
14 wetlands loss.

15 Any permit issued authorizing activities in type A wet-
16 lands may contain such terms and conditions concerning
17 mitigation (including those applicable under paragraph (3)
18 for type B wetlands) that the Secretary deems appropriate
19 to prevent the unacceptable loss or degradation of type
20 A wetlands.

21 “(3)(A) The Secretary may issue a permit authoriz-
22 ing activities in type B wetlands subject to such terms and
23 conditions as the Secretary finds are necessary to ensure
24 that the watershed or aquatic ecosystem of which such
25 wetlands are a part does not suffer significant loss or deg-

1 radation of wetlands values and functions. In determining
2 whether or not specific terms and conditions are necessary
3 to avoid a significant loss of wetlands values and func-
4 tions, the Secretary shall consider the following:

5 “(i) The quality and quantity of ecologically sig-
6 nificant functions served by the areas to be affected.

7 “(ii) The opportunities to reduce impacts
8 through cost effective design to avoid or minimize
9 use of wetlands areas.

10 “(iii) The costs of mitigation requirements and
11 the social, recreational, and economic benefits associ-
12 ated with the proposed activity, including local, re-
13 gional, or national needs for improved or expanded
14 infrastructure.

15 “(iv) The ability of the permittee to mitigate
16 wetlands loss or degradation as measured by wet-
17 lands functions.

18 “(v) The environmental benefit, measured by
19 wetlands functions, that may occur through mitiga-
20 tion efforts, including restoring, preserving, enhanc-
21 ing, or creating wetlands values and functions.

22 “(vi) The marginal impact of the proposed ac-
23 tivity on the watershed of which such wetlands are
24 a part.

1 “(B) In considering an application for activities on
2 type B wetlands, the Secretary may require alternative
3 site analyses for individual permit applications involving
4 the alteration or permanent surface disturbance of 10 or
5 more contiguous acres of wetlands. There shall be a rebut-
6 table presumption that the project purpose as defined by
7 the applicant shall be binding upon the Secretary. The def-
8 inition of project purpose for projects sponsored by public
9 agencies shall be binding upon the Secretary, subject to
10 the authority of the Secretary to impose mitigation re-
11 quirements to minimize impacts on wetlands values and
12 functions, including cost effective redesign of projects to
13 avoid wetlands areas.

14 “(C) Except as otherwise provided in this section, re-
15 quirements for mitigation shall be imposed when the Sec-
16 retary finds that activities undertaken under this section
17 will result in the loss or degradation of type B wetlands
18 functions and values where such loss or degradation is not
19 a temporary or incidental impact. When determining miti-
20 gation requirements in any specific case, the Secretary
21 shall take into consideration the type of wetlands affected,
22 the character of the impact on ecological functions, wheth-
23 er any adverse effects on wetlands are of a permanent or
24 temporary nature, and the cost effectiveness of such miti-

1 gation and shall seek to minimize the costs of such mitiga-
2 tion.

3 “(D) In accordance with subsection (j), the Secretary
4 shall issue rules governing requirements for mitigation for
5 activities occurring in type B wetlands that allow for—

6 “(i) minimization of impacts through project
7 design, including avoidance of specific wetlands im-
8 pacts where economically practicable and consistent
9 with the project’s purpose, provisions for compen-
10 satory mitigation, if any, and other terms and condi-
11 tions necessary and appropriate in the public inter-
12 est;

13 “(ii) preservation or donation of type A wet-
14 lands or type B wetlands (where title has not been
15 acquired by the United States and no compensation
16 for the taking of such wetlands has been provided)
17 as mitigation for activities that alter or degrade wet-
18 lands;

19 “(iii) enhancement or restoration of degraded
20 wetlands as compensation for wetlands lost or de-
21 graded through permitted activity;

22 “(iv) compensation through contribution to a
23 mitigation banking program established for a State
24 pursuant to subparagraph (F);

1 “(v) offsite compensatory mitigation if such
2 mitigation contributes to the restoration, enhance-
3 ment or creation of significant wetlands values on a
4 watershed or ecosystem-wide basis and is balanced
5 with the effects that the proposed activity will have
6 on the specific site; except that offsite compensatory
7 mitigation, if any, shall be required only within the
8 State within which the proposed activity is to occur,
9 and shall, to the extent practicable, be within the
10 watershed within which the proposed activity is to
11 occur, unless otherwise consistent with a State wet-
12 lands management plan;

13 “(vi) contribution of in-kind value acceptable to
14 the Secretary and otherwise authorized by law;

15 “(vii) in areas subject to wetlands loss, the con-
16 struction of coastal protection and enhancement
17 projects;

18 “(viii) contribution of resources of more than
19 one permittee toward a single mitigation project;
20 and

21 “(ix) other mitigation measures determined by
22 the Secretary to be appropriate in the public interest
23 and consistent with the requirements and purposes
24 of this Act.

1 “(E) Notwithstanding the provisions of subparagraph
2 (C), the Secretary may determine not to impose require-
3 ments for compensatory mitigation if the Secretary finds
4 that—

5 “(i) the adverse impacts of a permitted activity
6 are limited;

7 “(ii) the failure to impose compensatory mitiga-
8 tion requirements is compatible with maintaining
9 wetlands functions and values and no practicable
10 and reasonable means of mitigation are available;

11 “(iii) there is an abundance of similar signifi-
12 cant wetlands functions and values in or near the
13 area in which the proposed activity is to occur that
14 will continue to serve the functions lost or degraded
15 as a result of such activity, taking into account the
16 impacts of such proposed activity and the cumulative
17 impacts of similar activity in the area;

18 “(iv) the temporary character of the impacts
19 and the use of minimization techniques make com-
20 pensatory mitigation unnecessary to protect signifi-
21 cant wetlands values; or

22 “(v) a waiver from requirements for compen-
23 satory mitigation is necessary to prevent special
24 hardship.

1 “(F) The Secretary, in consultation with the Direc-
2 tor, shall establish a mitigation banking program in each
3 State. Such mitigation banking program shall be devel-
4 oped in consultation with the Director and the Governor
5 of the State in which the wetlands covered by such mitiga-
6 tion banking program is located and, after approval by
7 the Secretary, will be available to the Secretary as a means
8 for ensuring compensation for loss and degradation of wet-
9 lands functions and values in such State in accordance
10 with the requirements of this paragraph. The primary ob-
11 jective of such programs shall be to provide for the res-
12 toration, enhancement, or, where feasible, creation of eco-
13 logically significant wetlands on an ecosystem basis. Such
14 programs shall—

15 “(i) provide a preference for larger scale mitiga-
16 tion projects, unless the Secretary (or the Governor
17 of a State that is administering its own permit pro-
18 gram under subsection (m)) determines that a small-
19 er project will contribute substantially to the con-
20 servation, enhancement or restoration of ecologically
21 significant wetlands values and functions or that the
22 restoration of indigenous wetlands resources cannot
23 be accomplished through large-scale projects;

24 “(ii) authorize mitigation banks sponsored ei-
25 ther by private entities or public entities;

1 “(iii) provide for crediting of contributions to
2 the mitigation bank in land, cash, or in-kind con-
3 tributions so that persons unable to sponsor specific
4 mitigation projects can contribute to a State or pri-
5 vately maintained mitigation bank;

6 “(iv) have sufficient requirements to ensure
7 completion, maintenance and supervision for at least
8 a 25-year period, including requirements for bonds
9 or other evidence of financial responsibility;

10 “(v) authorize the imposition of bonding re-
11 quirements on private entities operating such banks;

12 “(vi) limit activities in or on wetlands that are
13 part of a mitigation bank to uses that are consistent
14 with maintaining or gaining significant wetlands val-
15 ues and functions; and

16 “(vii) authorize a credit to be provided on an
17 acre-for-acre or value-for-value basis for type A and
18 B wetlands that are permanently protected in na-
19 tional conservation units in States that have con-
20 verted less than 10 percent of their State’s historic
21 wetlands base.

22 “(4)(A) In the case of any application for authoriza-
23 tion to undertake activities in wetlands that are not eligi-
24 ble for treatment on an expedited basis pursuant to para-
25 graph (5) of this subsection, final action by the Secretary

1 shall occur within 90 days following the date such applica-
2 tion is filed, unless—

3 “(i) the Secretary and the applicant agree that
4 such final action shall occur within a shorter or
5 longer period of time;

6 “(ii) the Secretary determines that an addi-
7 tional, specified period of time is necessary to permit
8 the Secretary to comply with other applicable Fed-
9 eral law; or

10 “(iii) the Secretary, within 15 days from the
11 date such application is received, notifies the appli-
12 cant that such application does not contain all infor-
13 mation necessary to allow the Secretary to consider
14 such application and identifies any necessary addi-
15 tional information, in which case, the provisions of
16 subparagraph (B) shall apply.

17 “(B) Upon the receipt of a request for additional in-
18 formation under subparagraph (A)(iii), the applicant shall
19 supply such additional information and shall advise the
20 Secretary that the application contains all requested infor-
21 mation and is therefore complete. The Secretary may—

22 “(i) within 30 days of the receipt of notice of
23 the applicant that the application is complete, deter-
24 mine that the application does not contain all re-
25 quested additional information and, on that basis,

1 deny the application without prejudice to resubmis-
2 sion; or

3 “(ii) within 90 days from the date that the ap-
4 plicant provides notification to the Secretary that
5 the application is complete, review the application
6 and take final action.

7 “(C) If the Secretary fails to take final action on an
8 application under this paragraph within 90 days from the
9 date that the applicant provides notification to the Sec-
10 retary that such application is complete, a permit shall
11 be presumed to be granted authorizing the activities pro-
12 posed in such application under such terms and conditions
13 as are stated in such completed application.

14 “(5)(A) Activities in wetlands that have been classi-
15 fied as type C wetlands by the Secretary or the Director
16 may be undertaken without authorization required under
17 subsection (b) of this section.

18 “(B) The Secretary may establish requirements for
19 reporting activities undertaken in type C wetlands.

20 “(C) No Federal requirements for alternative site
21 analyses or mitigation of environmental impacts shall
22 apply for activities undertaken in type C wetlands.

23 “(6) The Secretary may, by rule in accordance with
24 subsection (j), issue general permits on a State, regional,
25 or nationwide basis for any category of activities involving

1 activities described in section (a) of this section in wet-
2 lands if the Secretary determines that such activities are
3 similar in nature and that such activities, when performed
4 separately and cumulatively, will not result in the signifi-
5 cant loss of ecologically significant wetlands values and
6 functions. Permits issued under this subsection shall in-
7 clude procedures for expedited review of eligibility for such
8 permits (if such review is required) and may include re-
9 quirements for reporting and mitigation. Requirements for
10 compensatory mitigation for such permits may be imposed
11 where necessary to avoid or minimize the significant loss
12 or degradation of significant wetlands values and func-
13 tions where such loss or degradation is not a temporary
14 or incidental impact. Nationwide, general or regional per-
15 mits in effect on the date of the enactment of the Com-
16 prehensive Wetlands Conservation and Management Act
17 of 1995 shall remain in effect until otherwise modified by
18 the Secretary.

19 “(f) ACTIVITIES NOT REQUIRING PERMIT.—(1) Ex-
20 cept as provided in paragraph (3) of this subsection, ac-
21 tivities undertaken in wetlands are exempt from the re-
22 quirements of this section and are not prohibited by or
23 otherwise subject to regulation under this section or sec-
24 tion 301 or 402 of this Act (except effluent standards or

1 prohibitions under section 307 of this Act), if such activi-
2 ties—

3 “(A) result from normal farming, silviculture,
4 aquaculture, and ranching activities and practices,
5 such as plowing, seeding, cultivating, haying, graz-
6 ing, minor drainage, burning of vegetation in con-
7 nection with such activities, harvesting for the pro-
8 duction of food, fiber, and forest products, or upland
9 soil and water conservation practices;

10 “(B) are for the purpose of maintenance, in-
11 cluding emergency reconstruction of recently dam-
12 aged parts of currently serviceable structures such
13 as dikes, dams, levees, water control structures,
14 groins, riprap, breakwaters, utility distribution and
15 transmission lines, causeways, and bridge abut-
16 ments or approaches, and transportation structures;

17 “(C) are for the purpose of construction or
18 maintenance of farm, stock or aquaculture ponds or
19 irrigation canals and ditches, or the maintenance of
20 drainage ditches;

21 “(D) are for the purpose of construction of
22 temporary sedimentation basins on a construction
23 site which does not include placement of fill material
24 into the navigable waters;

1 “(E) are for the purpose of construction or
2 maintenance of farm roads or forest roads, tem-
3 porary roads for moving mining equipment, or ac-
4 cess roads for utility distribution and transmission
5 lines, if such roads are constructed and maintained,
6 in accordance with best management practices, to
7 assure that flow and circulation patterns and chemi-
8 cal and biological characteristics of the waters are
9 not impaired, that the reach of the waters is not
10 reduced, and that any adverse effect on the aquatic
11 environment will be otherwise minimized;

12 “(F) are undertaken on farmed wetlands, ex-
13 cept that any change in use of such land for the
14 purpose of undertaking activities that are not ex-
15 empt from regulation under this subsection shall be
16 subject to the requirements of this section to the ex-
17 tent that such farmed wetlands are ‘wetlands’ under
18 paragraph (2) of subsection (g);

19 “(G) result from any activity with respect to
20 which a State has an approved program under sec-
21 tion 208(b)(4) of this Act which meets the require-
22 ments of subparagraphs (B) and (C) of such section;

23 “(H) are consistent with a State or local land
24 management plan submitted to the Secretary and
25 approved pursuant to paragraph (2);

1 “(I) are undertaken in connection with a marsh
2 management and conservation program in a coastal
3 parish in the State of Louisiana where such program
4 has been approved by the Governor of such State or
5 the designee of the Governor;

6 “(J) are undertaken on lands or involve activi-
7 ties within a State’s coastal zone which are excluded
8 from regulation under a State coastal zone manage-
9 ment program approved under the Coastal Zone
10 Management Act of 1972 (16 U.S.C. 1451, et seq.);

11 “(K) are undertaken in incidentally created
12 wetlands, unless such incidentally created wetlands
13 have exhibited wetlands functions and values for
14 more than 5 years in which case activities under-
15 taken in such wetlands shall be subject to the re-
16 quirements of this section;

17 “(L) are part of expanding an ongoing farming
18 operation involving the water dependent, obligate
19 crop *Vaccinium macrocarpin*, so long as such expan-
20 sion does not occur in type A wetlands, does not re-
21 sult in the conversion of more than 10 acres of wet-
22 lands per operator per year, and the converted wet-
23 lands (other than where dikes and other necessary
24 facilities are placed) remain as wetlands or other wa-
25 ters of the United States;

1 “(M) are for the purpose of preserving and en-
2 hancing aviation safety or are undertaken in order
3 to prevent an airport hazard; or

4 “(N) result from aggregate or clay mining ac-
5 tivities in wetlands conducted pursuant to a State
6 or Federal permit that requires the reclamation of
7 such affected wetlands.

8 Conditions of reclamation shall include that for any site,
9 such reclamation shall be completed within 5 years of the
10 commencement of activities at such site and that upon
11 completion of such reclamation, such wetlands shall sup-
12 port wetlands functions and values equivalent to the func-
13 tions and values supported by such wetlands at the time
14 of commencement of such activities.

15 “(2) Any State or political subdivision thereof acting
16 pursuant to State authorization may develop a land man-
17 agement plan with respect to lands that include identified
18 wetlands. The State or local government agency may sub-
19 mit any such plan to the Secretary for review and ap-
20 proval. The Secretary shall, within 60 days, notify in writ-
21 ing the designated State or local official of approval or
22 disapproval of any such plan. The Secretary shall approve
23 any plan that is consistent with the objectives and policies
24 of this section. No person shall be entitled to judicial re-
25 view of the decision of the Secretary to approve or dis-

1 approve a land management plan under this paragraph.
2 Nothing in this paragraph shall be construed to alter,
3 limit, or supersede the authority of a State or political
4 subdivision thereof to establish land management plans for
5 purposes other than the provisions of this subsection.

6 “(g) RULES FOR DELINEATING WETLANDS.—(1)
7 The Secretary is authorized and directed to establish
8 standards, by rule in accordance with subsection (j), that
9 shall govern the delineation of lands as ‘wetlands’ for pur-
10 poses of this section. Such rules shall be established after
11 consultation with other agencies of the United States, in-
12 cluding the United States Fish and Wildlife Service, the
13 Environmental Protection Agency, and the United States
14 Natural Resources Conservation Service, and shall be
15 binding on all Federal agencies in connection with the ad-
16 ministration or implementation of any provision of this
17 section. The standards for delineation of wetlands and any
18 decision of the Secretary, the Director, or any other Fed-
19 eral officer or agency made in connection with the admin-
20 istration of this section shall comply with the requirements
21 for delineation of wetlands set forth in paragraph (2) of
22 this subsection.

23 “(2)(A) The standards established by rule or applied
24 in any case for purposes of this section shall ensure that
25 lands are delineated as wetlands only if such lands are

1 found to be 'wetlands' under section 502 of this Act; ex-
2 cept that such standards may not—

3 “(i) result in the delineation of lands as wet-
4 lands unless clear evidence of wetlands hydrology,
5 hydrophytic vegetation, and hydric soil are found to
6 be present during the period in which such delineation
7 is made, which delineation shall be conducted
8 during the growing season unless otherwise re-
9 quested by the applicant;

10 “(ii) result in the classification of vegetation as
11 hydrophytic if such vegetation is equally adapted to
12 dry or wet soil conditions or is more typically adapt-
13 ed to dry soil conditions than to wet soil conditions;

14 “(iii) result in the classification of lands as wet-
15 lands unless some obligate wetlands vegetation is
16 found to be present during the period of delineation;
17 except that if such vegetation has been removed for
18 the purpose of evading jurisdiction under this sec-
19 tion, this clause shall not apply;

20 “(iv) result in the conclusion that wetlands hy-
21 drology is present unless water is found to be
22 present at the surface of such lands for at least 21
23 consecutive days during the growing season in which
24 such delineation is made and for 21 consecutive days

1 in the growing seasons in a majority of the years for
2 which records are available; and

3 “(v) result in the classification of lands as wet-
4 lands that are temporarily or incidentally created as
5 a result of adjacent development activity.

6 “(B) In addition to the requirements of subparagraph
7 (A), any standards established by rule or applied to delin-
8 eate wetlands for purposes of this section shall provide
9 that ‘normal circumstances’ shall be determined on the
10 basis of the factual circumstances in existence at the time
11 a classification is made under subsection (h) or at the time
12 of application under subsection (e), whichever is applica-
13 ble, if such circumstances have not been altered by an ac-
14 tivity prohibited under this section.

15 “(3) No more than 20 percent of any county, parish,
16 or borough shall be classified as type A wetlands; except
17 that, type A wetlands in Federal or State ownership (in-
18 cluding type A wetlands in units of the National Wildlife
19 Refuge System, the National Park System, and lands held
20 in conservation easements) shall be included in calculating
21 the percent of type A wetlands in a county, parish, or bor-
22 ough.

23 “(4)(A) For purposes of this section, wetlands located
24 on agricultural lands and associated nonagricultural lands
25 shall be delineated by the Secretary of Agriculture in ac-

1 cordance with section 1222(j) of the Food Security Act
2 of 1985 (16 U.S.C. 3822(j)).

3 “(B) Any area of agricultural land or any activities
4 related to the land determined to be exempt from the re-
5 quirements of subtitle C of title XII of the Food Security
6 Act of 1985 (16 U.S.C. 3821 et seq.) shall also be exempt
7 from the requirements of this section for such period of
8 time as those lands are used as agricultural lands.

9 “(C) For purposes of this section, the term ‘agricul-
10 tural lands’ means cropland, pastureland, native pasture,
11 rangeland, orchards, vineyards, nonindustrial forest land,
12 and any other land used to produce or support the produc-
13 tion of an annual or perennial crop of a commodity, aqua-
14 culture product, nursery product, or livestock.

15 “(h) UNITED STATES FISH AND WILDLIFE SERVICE
16 WETLANDS IDENTIFICATION AND CLASSIFICATION
17 PROJECT.—(1) The Director, in concurrence with the
18 Chief of the Natural Resources Conservation Service, shall
19 undertake a project to identify and classify wetlands in
20 the United States. The Director shall complete such
21 project not later than 10 years after the date of the enact-
22 ment of the Comprehensive Wetlands Conservation and
23 Management Act of 1995.

24 “(2) In conducting the project under this section, the
25 Director shall identify and classify wetlands in accordance

1 with standards for delineation of wetlands established by
2 the Secretary under subsection (g) of this section.

3 “(3) In conducting the project under this section, the
4 Director shall provide notice and an opportunity for a pub-
5 lic hearing in each county, parish or borough of a State
6 before completion of identification and classification of
7 wetlands in such county, parish, or borough.

8 “(4) Promptly after completion of identification and
9 classification of wetlands in a county, parish, or borough
10 under this section, the Director shall publish information
11 on such identification and classification in the Federal
12 Register and in publications of wide circulation and take
13 other steps reasonably necessary to ensure that such infor-
14 mation is available to the public.

15 “(5) The Director shall report to Congress on imple-
16 mentation of the project to be conducted under this section
17 not later than 2 years after the date of the enactment of
18 the Comprehensive Wetlands Conservation and Manage-
19 ment Act of 1995 and annually thereafter.

20 “(6) Any classification of lands as wetlands under
21 this section shall, to the fullest extent practicable, be re-
22 corded on the property records in the county, parish, or
23 borough in which such wetlands are located.

24 “(i) ADMINISTRATIVE APPEALS.—(1) Not later than
25 1 year after the date of the enactment of the Comprehen-

1 sive Wetlands Conservation and Management Act of 1995,
2 the Secretary shall, after providing notice and opportunity
3 for public comment, issue regulations establishing proce-
4 dures pursuant to which—

5 “(A) a landowner may appeal a determination
6 of regulatory jurisdiction under this section with re-
7 spect to a parcel of property;

8 “(B) a landowner may appeal a wetlands classi-
9 fication under this section with respect to a parcel
10 of property;

11 “(C) any person may appeal a determination
12 that the proposed activity is not exempt under sub-
13 section (f);

14 “(D) a landowner may appeal a determination
15 that an activity is not regulated under a general per-
16 mit issued under this section;

17 “(E) an applicant for a permit under this sec-
18 tion may appeal a determination made pursuant to
19 this section to deny issuance of the permit or to im-
20 pose a requirement under the permit; and

21 “(F) a landowner or any other person required
22 to restore or otherwise alter a parcel of property
23 pursuant to an order issued under this section may
24 appeal such order.

1 “(2) An appeal brought pursuant to this subsection
2 shall be filed not later than 30 days after the date on
3 which the decision or action on which the appeal is based
4 occurs.

5 “(3) An appeal brought pursuant to this subsection
6 shall be decided not later than 90 days after the date on
7 which the appeal is filed.

8 “(4) Any person who participated in the public com-
9 ment process concerning a decision or action that is the
10 subject of an appeal brought pursuant to this subsection
11 may intervene in such appeal.

12 “(5) An appeal brought pursuant to this subsection
13 shall be heard and decided by an appropriate and impar-
14 tial official of the Federal Government, other than the offi-
15 cial who made the determination or carried out the action
16 that is the subject of the appeal.

17 “(6) A landowner or any other person who has filed
18 an appeal under this subsection shall not be required to
19 pay a penalty or perform mitigation or restoration as-
20 sessed under this section or section 309 until after the
21 appeal has been decided.

22 “(j) ADMINISTRATIVE PROVISIONS.—(1) Not later
23 than 1 year after the date of the enactment of the Com-
24 prehensive Wetlands Conservation and Management Act
25 of 1995, the Secretary shall, after notice and opportunity

1 for comment, issue (in accordance with section 553 of title
2 5 of the United States Code and this section) final rules
3 and regulations for the issuance of permits. Such rules
4 and regulations shall, in accordance with this section, pro-
5 vide—

6 “(A) standards and procedures for the classi-
7 fication and delineation of wetlands and procedures
8 for administrative review of any such classification
9 or delineation;

10 “(B) standards and procedures for the review
11 of State or local land management plans and State
12 programs for the regulation of wetlands;

13 “(C) for the issuance of general, nationwide, or
14 regional permits;

15 “(D) standards and procedures for the individ-
16 ual permit applications under this section;

17 “(E) for enforcement of this section;

18 “(F) any other rules and regulations that the
19 Secretary deems necessary or appropriate to imple-
20 ment the requirements of this section;

21 “(G) standards and procedures for administra-
22 tive appeals of actions by the Secretary denying ap-
23 plications for permits under subsection (b) or issuing
24 such permits subject to conditions; and

1 “(H) requirements governing the establishment
2 of mitigation banks.

3 “(2) Any judicial review of final regulations issued
4 pursuant to this section and the Secretary’s denial of any
5 petition for the issuance, amendment, or repeal of any reg-
6 ulation under this section shall be in accordance with sec-
7 tions 701 through 706 of title 5 of the United States Code;
8 except that a petition for review of action of the Secretary
9 in issuing any regulation or requirement under this section
10 or denying any petition for the issuance, amendment, or
11 repeal of any regulation under this section may be filed
12 only in the United States Court of Appeals for the District
13 of Columbia, and such petition shall be filed within ninety
14 days from the date of such issuance or denial or after such
15 date if such petition for review is based solely on grounds
16 arising after such ninetieth day. Action of the Secretary
17 with respect to which review could have been obtained
18 under this subsection shall not be subject to judicial review
19 in civil or criminal proceedings for enforcement.

20 “(3) The Secretary shall, within 90 days after the
21 date of the enactment of the Comprehensive Wetlands
22 Conservation and Management Act of 1995, issue interim
23 rules and regulations consistent with this section to take
24 effect immediately. Notice of the interim regulations shall
25 be published in the Federal Register, and such regulations

1 shall be binding until the issuance of final regulations pur-
2 suant to paragraph (1); except that the Secretary shall
3 provide adequate procedures for waiver of any provisions
4 of such interim regulations to avoid special hardship, in-
5 equity, or unfair distribution of burdens or to advance
6 the purposes of this section.

7 “(4) Except where otherwise expressly provided in
8 this section, the Secretary shall administer this section.
9 The Secretary or any other Federal officer or agency in
10 which any function under this section is vested or dele-
11 gated is authorized to perform any and all acts (including
12 appropriate enforcement activity), and to prescribe, issue,
13 amend, or rescind such rules or orders as such officer or
14 agency may find necessary or appropriate with this sub-
15 section, subject to the requirements of this subsection.

16 “(k) VIOLATIONS.—

17 “(1) COMPLIANCE ORDER.—Whenever, on the
18 basis of reliable and substantial information and
19 after reasonable inquiry, the Secretary finds that
20 any person is or may be in violation of this section
21 or of any condition or limitation set forth in a per-
22 mit issued by the Secretary under this section, the
23 Secretary shall issue an order requiring such persons
24 to comply with this section or with such condition or

1 limitation or the Secretary shall bring a civil action
2 in accordance with paragraph (3).

3 “(2) NOTICE AND OTHER PROCEDURAL RE-
4 QUIREMENTS RELATING TO ORDERS.—A copy of any
5 order issued under this subsection shall be sent im-
6 mediately by the Secretary to the Governor of the
7 State in which the violation occurs and the Gov-
8 ernors of other affected States. The person commit-
9 ting the asserted violation that results in issuance of
10 the order shall be notified of the issuance of the
11 order by personal service made to the appropriate
12 person or corporate officer. The notice shall state
13 with reasonable specificity the nature of the asserted
14 violation and specify a time for compliance, not to
15 exceed 30 days, which the Secretary determines is
16 reasonable taking into account the seriousness of the
17 asserted violation and any good faith efforts to com-
18 ply with applicable requirements; except that if the
19 person receiving notice of the asserted violation dis-
20 puts the Secretary’s determination and so notifies
21 the Secretary in writing within 90 days of receipt of
22 the Secretary’s notice, the Secretary shall within 60
23 days after receiving notice of a dispute of an as-
24 serted violation, or within 150 days from the date of
25 notification of violation by the Secretary if no notice

1 of a dispute is received (or after serving notice, un-
2 less otherwise agreed to by the parties) prosecute a
3 civil action in accordance with paragraph (3) or re-
4 scind such order and be estopped from any further
5 enforcement proceedings for the same asserted viola-
6 tion.

7 “(3) CIVIL ACTION ENFORCEMENT.—The Sec-
8 retary is authorized to commence a civil action for
9 appropriate relief, including a permanent or tem-
10 porary injunction, for any violation for which the
11 Secretary is authorized to issue a compliance order
12 under paragraph (1). Any action under this para-
13 graph may be brought in the district court of the
14 United States for the district in which the defendant
15 is located or resides or is doing business, and such
16 court shall have jurisdiction to restrain such viola-
17 tion and to require compliance. Notice of the com-
18 mencement of such action shall be given immediately
19 to the appropriate State.

20 “(4) CIVIL PENALTIES.—Any person who vio-
21 lates any condition or limitation in a permit issued
22 by the Secretary under this section and any person
23 who violates any order issued by the Secretary under
24 paragraph (1) shall be subject to a civil penalty not
25 to exceed \$25,000 per day for each violation com-

1 mencing on the day of the violation. The amount of
2 the penalty imposed per day shall be in proportion
3 to the scale or scope of the project. In determining
4 the amount of a civil penalty, the court shall con-
5 sider the seriousness of the violation or violations,
6 the economic benefit (if any) resulting from the vio-
7 lation, any history of such violations, any good-faith
8 efforts to comply with the applicable requirements,
9 the economic impact of the penalty on the violator,
10 and such other matters as justice may require.

11 “(5) CRIMINAL PENALTIES.—If any person
12 knowingly violates any condition or limitation in a
13 permit issued by the Secretary under this section or
14 knowingly violates an order issued by the Secretary
15 under paragraph (1) and has been notified of the is-
16 suanace of such order under paragraph (2) and if
17 such violation has resulted in actual degradation of
18 the environment, such person shall be punished by
19 a fine of not less than \$5,000 nor more than
20 \$50,000 per day of violation, or by imprisonment for
21 not more than 3 years, or by both. If a conviction
22 of a person is for a violation committed after a first
23 conviction of such person under this paragraph, pun-
24 ishment shall be by a fine of not more than
25 \$100,000 per day of violation, or imprisonment of

1 not more than 6 years, or by both. An action for im-
2 position of a criminal penalty under this paragraph
3 may only be brought by the Attorney General.

4 “(l) STATE AUTHORITY TO CONTROL DIS-
5 CHARGES.—Nothing in this section shall preclude or deny
6 the right of any State or interstate agency to control ac-
7 tivities in waters within the jurisdiction of such State, in-
8 cluding any activity of any Federal agency, and each such
9 agency shall comply with such State or interstate require-
10 ments both substantive and procedural to control such ac-
11 tivities to the same extent that any person is subject to
12 such requirements. This section shall not be construed as
13 affecting or impairing the authority of the Secretary to
14 maintain navigation.

15 “(m) STATE REGULATION OF WETLANDS.—(1) The
16 Governor of any State desiring to administer its own indi-
17 vidual and general permit program for activities covered
18 by this section within its jurisdiction may submit to the
19 Secretary a description of the program it proposes to es-
20 tablish and administer under State law or under an inter-
21 state compact. In addition, such State shall submit a
22 statement from the chief legal officer in the case of the
23 State or interstate agency, that the laws of such State,
24 or the interstate compact, as the case may be, provide ade-
25 quate authority to carry out the described program.

1 “(2) Not later than 1 year after the date of the re-
2 ceipt by the Secretary of a program and statement submit-
3 ted by any State under paragraph (1), the Secretary shall
4 determine whether such State has the following authority
5 with respect to the issuance of permits pursuant to such
6 program:

7 “(A) to issue permits which—

8 “(i) apply, and assure compliance with,
9 any applicable requirements of this section; and

10 “(ii) can be terminated or modified for
11 cause, including—

12 “(I) violation of any condition of the
13 permit;

14 “(II) obtaining a permit by misrepre-
15 sentation, or failure to disclose fully all rel-
16 evant facts; or

17 “(III) change in any condition that
18 requires either a temporary or permanent
19 reduction or elimination of the permitted
20 activity;

21 “(B) to issue permits which apply, and ensure
22 compliance with, all applicable requirements of sec-
23 tion 308 of this Act or to inspect, monitor, enter,
24 and require reports to at least the same extent as
25 required in section 308 of this Act;

1 “(C) to ensure that the public, and any other
2 State the waters of which may be affected, receive
3 notice of each application for a permit and to pro-
4 vide an opportunity for public hearing before a rul-
5 ing on each such application;

6 “(D) to ensure that the Secretary receives no-
7 tice of each application for a permit and that, prior
8 to any action by the State, both the applicant for
9 the permit and the State have received from the Sec-
10 retary information with respect to any advance clas-
11 sification applicable to wetlands that are the sub-
12 ject of such application;

13 “(E) to ensure that any State (other than the
14 permitting State) whose waters may be affected by
15 the issuance of a permit may submit written rec-
16 ommendation to the permitting State with respect to
17 any permit application and, if any part of such writ-
18 ten recommendations are not accepted by the per-
19 mitting State, that the permitting State will notify
20 such affected State (and the Secretary) in writing of
21 its failure to so accept such recommendations to-
22 gether with its reasons for doing so; and

23 “(F) to abate violations of the permit or the
24 permit program, including civil and criminal pen-
25 alties and other ways and means of enforcement.

1 “(3) If, with respect to a State program submitted
2 under paragraph (1) of this section, the Secretary deter-
3 mines that the State—

4 “(A) has the authority set forth in paragraph
5 (2), the Secretary shall approve the program and so
6 notify such State and suspend the issuance of per-
7 mits under subsection (b) for activities with respect
8 to which a permit may be issued pursuant to the
9 State program; or

10 “(B) does not have the authority set forth in
11 paragraph (2) of this subsection, the Secretary shall
12 so notify such State and provide a description of the
13 revisions or modifications necessary so that the
14 State may resubmit the program for a determination
15 by the Secretary under this subsection.

16 “(4) If the Secretary fails to make a determination
17 with respect to any program submitted by a State under
18 this subsection within 1 year after the date of receipt of
19 such program, the program shall be deemed approved pur-
20 suant to paragraph (3)(A) and the Secretary shall so no-
21 tify the State and suspend the issuance of permits under
22 subsection (b) for activities with respect to which a permit
23 may be issued by the State.

24 “(5) After the Secretary approves a State permit pro-
25 gram under paragraph (3)(A) or (4), the Secretary shall

1 transfer any applications for permits pending before the
2 Secretary for activities with respect to which a permit may
3 be issued pursuant to the State program to the State for
4 appropriate action.

5 “(6) Upon notification from a State with a permit
6 program approved under this subsection that such State
7 intends to administer and enforce the terms and condi-
8 tions of a general permit issued by the Secretary under
9 subsection (e) with respect to activities in the State to
10 which such general permit applies, the Secretary shall sus-
11 pend the administration and enforcement of such general
12 permit with respect to such activities.

13 “(7) Whenever the Secretary determines after public
14 hearing that a State is not administering a program ap-
15 proved under paragraph (3)(A) in accordance with this
16 section, the Secretary shall notify the State and, if appro-
17 priate corrective action is not taken within a reasonable
18 time, not to exceed 90 days after the date of the receipt
19 of such notification, the Secretary shall—

20 “(A) withdraw approval of the program until
21 the Secretary determines such corrective action has
22 been taken; and

23 “(B) resume the program for the issuance of
24 permits under subsections (b) and (e) for all activi-
25 ties with respect to which the State was issuing per-

1 mits until such time as the Secretary makes the de-
2 termination described in paragraph (2) and the
3 State again has an approved program.

4 “(n) AVAILABILITY FOR PUBLIC INFORMATION.—A
5 copy of each permit application and each permit issued
6 under this section shall be available to the public. Such
7 permit application or portion thereof shall further be avail-
8 able on request for the purpose of reproduction.

9 “(o) TREATMENT OF COMPLIANCE.—Compliance
10 with a permit issued pursuant to this section, including
11 any activity carried out pursuant to a general permit is-
12 sued under this section, shall be deemed in compliance,
13 for purposes of sections 309 and 505, with sections 301,
14 307, and 403.

15 “(p) TRANSITION RULES.—After the effective date of
16 this section under section 806 of the Comprehensive Wet-
17 lands Conservation and Management Act of 1995, no per-
18 mit for any activity described in subsection (a) may be
19 issued except in accordance with this section. Any permit
20 for an activity described in subsection (a) issued under
21 this section prior to such effective date shall be deemed
22 to be a permit under this section and shall continue in
23 force and effect for the term of the permit unless revoked,
24 modified, or suspended in accordance with this section.
25 Any application for a permit for such an activity pending

1 under this section on such effective date shall be deemed
2 to be an application for a permit under this section.

3 “(q) LIMITATION ON FEES.—Any fee charged in con-
4 nection with the delineation or classification of wetlands,
5 an application for a permit authorizing an activity de-
6 scribed in subsection (a), or any other action taken in
7 compliance with the requirements of this section (other
8 than fines for violations under subsection (k)) shall not
9 exceed the amount in effect for such fee on January 1,
10 1990.

11 “(r) BALANCED IMPLEMENTATION.—(1) In imple-
12 menting their responsibilities under the regulatory pro-
13 gram under this section, the Secretary shall balance the
14 objective of conserving functioning wetlands with the ob-
15 jective of ensuring continued economic growth, providing
16 essential infrastructure, maintaining strong State and
17 local tax bases, and protecting against the diminishment
18 of the use and value of privately owned property.

19 “(2) In carrying out this section, the Secretary and
20 the heads of all other Federal agencies shall seek in all
21 actions to minimize the adverse effects of the regulatory
22 program under this section on the use and value of pri-
23 vately owned property.”.

1 **SEC. 804. DEFINITIONS.**

2 Section 502 of the Federal Water Pollution Control
3 Act (33 U.S.C. 1362) is amended by adding at the end
4 thereof the following new paragraphs:

5 “(21) The term ‘wetlands’ means lands which have
6 a predominance of hydric soils and which are inundated
7 by surface water at a frequency and duration sufficient
8 to support, and that under normal circumstances do sup-
9 port, a prevalence of vegetation typically adapted for life
10 in saturated soil conditions. Wetlands generally include
11 swamps, marshes, bogs, and similar areas.

12 “(22) The term ‘creation of wetlands’ means an activ-
13 ity that brings a wetland into existence at a site where
14 it did not formerly occur for the purpose of compensation.

15 “(23) The term ‘enhancement of wetlands’ means any
16 activity that increases the value of one or more functions
17 in existing wetlands.

18 “(24) The term ‘fastlands’ means lands located be-
19 hind permitted man-made structures, such as levees con-
20 structed and maintained to permit the utilization of such
21 lands for commercial, industrial or residential purposes
22 consistent with local land use planning requirements.

23 “(25) The term ‘wetlands functions’ means the roles
24 wetlands serve which are of value including flood water
25 storage, flood water conveyance, ground water discharge,
26 erosion control, wave attenuation, water quality protec-

1 tion, scenic and aesthetic use, food chain support, fish-
2 eries, wetlands plant habitat, aquatic habitat, and habitat
3 for wetland dependent wildlife.

4 “(26) The term ‘growing season’ means, for each
5 plant hardiness zone, the period between the average date
6 of last frost in spring and the average date of first frost
7 in autumn.

8 “(27) The term ‘incidentally created wetlands’ means
9 lands that exhibit wetlands characteristics sufficient to
10 meet the criteria for delineation of wetlands, where one
11 or more of such characteristics is the unintended result
12 of human induced alterations of hydrology.

13 “(28) The term ‘maintenance’ when used in reference
14 to wetlands means activities undertaken to assure continu-
15 ation of a wetland or the accomplishment of project goals
16 after a restoration or creation project has been technically
17 completed, including water level manipulations and control
18 of nonnative plant species.

19 “(29) The term ‘mitigation banking’ means wetlands
20 restoration, enhancement, preservation or creation for the
21 purpose of providing compensation for wetland degrada-
22 tion or loss.

23 “(30) The term ‘normal farming, silviculture, aqua-
24 culture and ranching activities’ means normal ongoing
25 practices identified as such by the Secretary of Agri-

1 culture, in consultation with the Cooperative Extension
2 Service for each State and the land grant university sys-
3 tem and agricultural colleges of the State, taking into ac-
4 count existing practices and such other practices as may
5 be identified in consultation with the affected industry or
6 community.

7 “(31) The term ‘prior converted cropland’ means
8 land that was both manipulated (drained or otherwise
9 physically altered to remove excess water from the land)
10 and cropped before December 23, 1985, to the extent that
11 such land no longer exhibits significant wetlands values.

12 “(32) The term ‘restoration’ in reference to wetlands
13 means an activity undertaken to return a wetland from
14 a disturbed or altered condition with lesser acreage or
15 fewer functions to a previous condition with greater wet-
16 lands acreage or functions.

17 “(33) The term ‘temporary impact’ means the dis-
18 turbance or alteration of wetlands caused by activities
19 under circumstances in which, within 3 years following the
20 commencement of such activities, such wetlands—

21 “(A) are returned to the conditions in existence
22 prior to the commencement of such activity; or

23 “(B) display conditions sufficient to ensure,
24 that without further human action, such wetlands

1 will return to the conditions in existence prior to the
2 commencement of such activity.

3 “(34) The term ‘airport hazard’ has the meaning
4 such term has under section 47102 of title 49, United
5 States Code.”.

6 **SEC. 805. TECHNICAL AND CONFORMING AMENDMENTS.**

7 Section 309 of the Federal Water Pollution Control
8 Act (33 U.S.C. 1319) is amended—

9 (1) in subsection (a)(1) by striking “or 404”;

10 (2) in subsection (a)(3) by striking “or in a
11 permit issued under section 404 of this title by a
12 State”;

13 (3) in each of subsections (c)(1)(A) and
14 (c)(2)(A) by striking “or in a permit” and all that
15 follows through “State;” and inserting a semicolon;

16 (4) in subsection (c)(3)(A) by striking “or in a
17 permit” and all that follows through “State, and”
18 and inserting “and”;

19 (5) by adding at the end of subsection (c) the
20 following:

21 “(8) TREATMENT OF CERTAIN VIOLATIONS.—

22 Any person who violates section 301 with respect to
23 the discharge of dredged or fill material into the
24 navigable waters for which a permit is required
25 under section 404 shall not be subject to punishment

1 under this subsection but shall be subject to punish-
2 ment under section 404(k)(5).”;

3 (6) in subsection (d) by striking “, or in a per-
4 mit issued under section 404 of this Act by a
5 State,”;

6 (7) by adding at the end of subsection (d) the
7 following: “Any person who violates section 301 with
8 respect to the discharge of dredged or fill material
9 into the navigable waters for which a permit is re-
10 quired under section 404 shall not be subject to a
11 civil penalty under this subsection but shall be sub-
12 ject to a civil penalty under section 404(k)(4).”;

13 (8) in subsection (g)(1)—

14 (A) by striking “—” and all that follows
15 through “(A)”;

16 (B) by striking “or in a permit issued
17 under section 404 of this title by a State, or”;
18 and

19 (C) by striking “(B)” and all that follows
20 through “as the case may be,” and inserting
21 “the Administrator”;

22 (9) by adding at the end of subsection (g) the
23 following:

24 “(12) TREATMENT OF CERTAIN VIOLATIONS.—
25 Any person who violates section 301 with respect to

1 the discharge of dredged or fill material into the
 2 navigable waters for which a permit is required
 3 under section 404 shall not be subject to assessment
 4 of a civil penalty under this subsection but shall be
 5 subject to assessment of a civil penalty under section
 6 404(k)(4).”; and

7 (10) by striking “or Secretary”, “or the Sec-
 8 retary”, “or the Secretary as the case may be,” “or
 9 Secretary’s”, and “and the Secretary” each place
 10 they appear.

11 **SEC. 806. EFFECTIVE DATE.**

12 This title, including the amendments made by this
 13 title, shall take effect on the 90th day following the date
 14 of the enactment of this Act.

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