

Union Calendar No. 52

104TH CONGRESS
1ST SESSION

H. R. 961

[Report No. 104-112]

A BILL

To amend the Federal Water Pollution Control Act.

MAY 3, 1995

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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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

MAY 3, 1995

Additional sponsors: Mr. YOUNG of Alaska, Mr. COBLE, Mr. BLUTE, Mrs. FOWLER, Mr. BACHUS, Mr. WAMP, Mr. LATHAM, Mr. LAHOOD, Mr. CONDIT, Mr. FIELDS of Texas, Mr. PICKETT, Mr. TAUZIN, Mr. MCDADE, Mr. GEKAS, and Mr. LINDER

MAY 3, 1995

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 15, 1995]

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. Research, investigations, training, and information.

Sec. 103. State management assistance.

Sec. 104. Mine water pollution control.

Sec. 105. Water sanitation in rural and Native Alaska villages.

Sec. 106. Authorization of appropriations for Chesapeake program.

Sec. 107. Great Lakes management.

TITLE II—CONSTRUCTION GRANTS

Sec. 201. Uses of funds.

Sec. 202. Administration of closeout of construction grant program.

Sec. 203. Sewage collection systems.

Sec. 204. Treatment works defined.

Sec. 205. Value engineering review.

Sec. 206. Grants for wastewater treatment.

TITLE III—STANDARDS AND ENFORCEMENT

Sec. 301. Effluent limitations.

Sec. 302. Pollution prevention opportunities.

Sec. 303. Water quality standards and implementation plans.

Sec. 304. Use of biological monitoring.

Sec. 305. Arid areas.

Sec. 306. Total maximum daily loads.

Sec. 307. Revision of criteria, standards, and limitations.

Sec. 308. Information and guidelines.

Sec. 309. Secondary treatment.

Sec. 310. Toxic pollutants.

Sec. 311. Local pretreatment authority.

Sec. 312. Compliance with management practices.

Sec. 313. Federal enforcement.

Sec. 314. Response plans for discharges of oil or hazardous substances.

Sec. 315. Marine sanitation devices.

Sec. 316. Federal facilities.

Sec. 317. Clean lakes.

Sec. 318. Cooling water intake structures.

- Sec. 319. Nonpoint source management programs.*
- Sec. 320. National estuary program.*
- Sec. 321. State watershed management programs.*
- Sec. 322. Stormwater management programs.*
- Sec. 323. Risk assessment and disclosure requirements.*
- Sec. 324. Benefit and cost criterion.*

TITLE IV—PERMITS AND LICENSES

- Sec. 401. Waste treatment systems for concentrated animal feeding operations.*
- Sec. 402. Permit reform.*
- Sec. 403. Review of State programs and permits.*
- Sec. 404. Statistical noncompliance.*
- Sec. 405. Anti-backsliding requirements.*
- Sec. 406. Intake credits.*
- Sec. 407. Combined sewer overflows.*
- Sec. 408. Sanitary sewer overflows.*
- Sec. 409. Abandoned mines.*
- Sec. 410. Beneficial use of biosolids.*
- Sec. 411. Waste treatment systems defined.*
- Sec. 412. Thermal discharges.*

TITLE V—GENERAL PROVISIONS

- Sec. 501. Consultation with States.*
- Sec. 502. Navigable waters defined.*
- Sec. 503. CAFO definition clarification.*
- Sec. 504. Publicly owned treatment works defined.*
- Sec. 505. State water quantity rights.*
- Sec. 506. Implementation of water pollution laws with respect to vegetable oil.*
- Sec. 507. Needs estimate.*
- Sec. 508. General program authorizations.*
- Sec. 509. Indian tribes.*
- Sec. 510. Food processing and food safety.*
- Sec. 511. Audit dispute resolution.*

TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

- Sec. 601. General authority for capitalization grants.*
- Sec. 602. Capitalization grant agreements.*
- Sec. 603. Water pollution control revolving loan funds.*
- Sec. 604. Allotment of funds.*
- Sec. 605. Authorization of appropriations.*
- Sec. 606. State nonpoint source water pollution control revolving funds.*

TITLE VII—MISCELLANEOUS PROVISIONS

- Sec. 701. Technical amendments.*
- Sec. 702. John A. Blatnik National Fresh Water Quality Research Laboratory.*
- Sec. 703. Wastewater service for colonias.*
- Sec. 704. Savings in municipal drinking water costs.*

TITLE VIII—WETLANDS CONSERVATION AND MANAGEMENT

- Sec. 801. Short title.*
- Sec. 802. Findings and statement of purpose.*
- Sec. 803. Wetlands conservation and management.*

Sec. 804. Definitions.
 Sec. 805. Technical and conforming amendments.
 Sec. 806. Effective date.

TITLE IX—NAVIGATIONAL DREDGING

Sec. 901. References to act.
 Sec. 902. Ocean dumping permits.
 Sec. 903. Dredged material permits.
 Sec. 904. Permit conditions.
 Sec. 905. Special provisions regarding certain dumping sites.
 Sec. 906. References to Administrator.

1 **SEC. 2. DEFINITION.**

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

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

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

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

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

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

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

18 *(6);*

19 *(2) in paragraph (7)—*

1 (A) by inserting “, including public and
2 private sector programs using economic incen-
3 tives,” after “programs”;

4 (B) by inserting “, including stormwater,”
5 after “nonpoint sources of pollution” the first
6 place it appears; and

7 (C) by striking the period at the end and
8 inserting a semicolon; and

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

10 “(8) it is the national policy to support State ef-
11 forts undertaken in consultation with tribal and local
12 governments to identify, prioritize, and implement
13 water pollution prevention and control strategies;”.

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

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

21 (c) *RECLAMATION AND REUSE.*—

22 (1) *RECLAMATION.*—Section 101(a)(4) is amend-
23 ed by inserting after “works” the following: “and to
24 reclaim waste water from municipal and industrial
25 sources”.

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

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

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

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

14 (b) *GRANTS TO LOCAL GOVERNMENTS.*—Section
15 104(b)(3) (33 U.S.C. 1254(b)(3)) is amended by inserting
16 “local governments,” after “interstate agencies,”.

17 (c) *TECHNICAL ASSISTANCE FOR RURAL AND SMALL*
18 *TREATMENT WORKS.*—Section 104(b) (33 U.S.C. 1254(b))
19 is amended—

20 (1) by striking “and” at the end of paragraph
21 (6);

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

24 (3) by adding at the end the following new para-
25 graphs:

1 “(8) make grants to nonprofit organizations to
2 provide technical assistance and training to rural
3 and small publicly owned treatment works to enable
4 such treatment works to achieve and maintain com-
5 pliance with the requirements of this Act; and

6 “(9) disseminate information to rural, small,
7 and disadvantaged communities with respect to the
8 planning, design, construction, and operation of
9 treatment works.”.

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

13 “(5) SMALL IMPOVERISHED COMMUNITIES.—

14 “(A) GRANTS.—The Administrator may
15 make grants to States to provide assistance for
16 planning, design, and construction of publicly
17 owned treatment works to provide wastewater
18 services to rural communities of 3,000 or less
19 that are not currently served by any sewage col-
20 lection or water treatment system and are se-
21 verely economically disadvantaged, as deter-
22 mined by the Administrator.

23 “(B) AUTHORIZATION.—There is authorized
24 to be appropriated to carry out this paragraph

1 *\$50,000,000 per fiscal year for fiscal years 1996*
2 *through 2000.”.*

3 (e) *AUTHORIZATION OF APPROPRIATIONS.—Section*
4 *104(u) (33 U.S.C. 1254(u)) is amended—*

5 (1) *by striking “and” before “(6)”;* and

6 (2) *by inserting before the period at the end the*
7 *following: “; and (7) not to exceed \$50,000,000 per*
8 *fiscal year for each of fiscal years 1996 through 2000*
9 *for carrying out the provisions of subsections (b)(3),*
10 *(b)(8), and (b)(9), except that not less than 20 percent*
11 *of the sums appropriated pursuant to this clause shall*
12 *be available for carrying out the provisions of sub-*
13 *sections (b)(8) and (b)(9)”.*

14 **SEC. 103. STATE MANAGEMENT ASSISTANCE.**

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

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

17 (2) *by inserting after “1990” the following: “,*
18 *such sums as may be necessary for each of fiscal years*
19 *1991 through 1995, and \$150,000,000 per fiscal year*
20 *for each of fiscal years 1996 through 2000”;* and

21 (3) *by adding at the end the following: “States*
22 *or interstate agencies receiving grants under this sec-*
23 *tion may use such funds to finance, with other States*
24 *or interstate agencies, studies and projects on inter-*
25 *state issues relating to such programs.”.*

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

2 *Section 107 (33 U.S.C. 1257) is amended to read as*
3 *follows:*

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

5 *“(a) ACIDIC AND OTHER TOXIC MINE DRAINAGE.—*
6 *The Administrator shall establish a program to demonstrate*
7 *the efficacy of measures for abatement of the causes and*
8 *treatment of the effects of acidic and other toxic mine drain-*
9 *age within qualified hydrologic units affected by past coal*
10 *mining practices for the purpose of restoring the biological*
11 *integrity of waters within such units.*

12 *“(b) GRANTS.—*

13 *“(1) IN GENERAL.—Any State or Indian tribe*
14 *may apply to the Administrator for a grant for any*
15 *project which provides for abatement of the causes or*
16 *treatment of the effects of acidic or other toxic mine*
17 *drainage within a qualified hydrologic unit affected*
18 *by past coal mining practices.*

19 *“(2) APPLICATION REQUIREMENTS.—An applica-*
20 *tion submitted to the Administrator under this sec-*
21 *tion shall include each of the following:*

22 *“(A) An identification of the qualified hydro-*
23 *logic unit.*

24 *“(B) A description of the extent to which*
25 *acidic or other toxic mine drainage is affecting*

1 *the water quality and biological resources within*
2 *the hydrologic unit.*

3 “(C) *An identification of the sources of*
4 *acidic or other toxic mine drainage within the*
5 *hydrologic unit.*

6 “(D) *An identification of the project and*
7 *the measures proposed to be undertaken to abate*
8 *the causes or treat the effects of acidic or other*
9 *toxic mine drainage within the hydrologic unit.*

10 “(E) *The cost of undertaking the proposed*
11 *abatement or treatment measures.*

12 “(c) *FEDERAL SHARE.—*

13 “(1) *IN GENERAL.—The Federal share of the cost*
14 *of a project receiving grant assistance under this sec-*
15 *tion shall be 50 percent.*

16 “(2) *LANDS, EASEMENTS, AND RIGHTS-OF-*
17 *WAY.—Contributions of lands, easements, and rights-*
18 *of-way shall be credited toward the non-Federal share*
19 *of the cost of a project under this section but not in*
20 *an amount exceeding 25 percent of the total project*
21 *cost.*

22 “(3) *OPERATION AND MAINTENANCE.—The non-*
23 *Federal interest shall bear 100 percent of the cost of*
24 *operation and maintenance of a project under this*
25 *section.*

1 “(d) *PROHIBITED PROJECTS.*—No acidic or other
2 toxic mine drainage abatement or treatment project may
3 receive assistance under this section if the project would ad-
4 versely affect the free-flowing characteristics of any river
5 segment within a qualified hydrologic unit.

6 “(e) *APPLICATIONS FROM FEDERAL ENTITIES.*—Any
7 Federal entity may apply to the Administrator for a grant
8 under this section for the purposes of an acidic or toxic
9 mine drainage abatement or treatment project within a
10 qualified hydrologic unit located on lands and waters under
11 the administrative jurisdiction of such entity.

12 “(f) *APPROVAL.*—The Administrator shall approve an
13 application submitted pursuant to subsection (b) or (e)
14 after determining that the application meets the require-
15 ments of this section.

16 “(g) *QUALIFIED HYDROLOGIC UNIT DEFINED.*—For
17 purposes of this section, the term ‘qualified hydrologic unit’
18 means a hydrologic unit—

19 “(1) in which the water quality has been signifi-
20 cantly affected by acidic or other toxic mine drainage
21 from past coal mining practices in a manner which
22 adversely impacts biological resources; and

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

1 **SEC. 105. WATER SANITATION IN RURAL AND NATIVE**
2 **ALASKA VILLAGES.**

3 (a) *IN GENERAL.*—Section 113 (33 U.S.C. 1263) is
4 amended by striking the section heading and designation
5 and subsections (a) through (f) and inserting the following:

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

7 “(a) *GRANTS.*—The Administrator is authorized to
8 make grants—

9 “(1) for the development and construction of fa-
10 cilities which provide sanitation services for rural
11 and Native Alaska villages;

12 “(2) for training, technical assistance, and edu-
13 cational programs relating to operation and mainte-
14 nance for sanitation services in rural and Native
15 Alaska villages; and

16 “(3) for reasonable costs of administering and
17 managing grants made and programs and projects
18 carried out under this section; except that not to ex-
19 ceed 4 percent of the amount of any grant made
20 under this section may be made for such costs.

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

24 “(c) *SPECIAL RULE.*—The Administrator shall award
25 grants under this section for project construction following

1 *the rules specified in subpart H of part 1942 of title 7 of*
2 *the Code of Federal Regulations.*

3 “(d) *GRANTS TO STATE FOR BENEFIT OF VILLAGES.*—
4 *Grants under this section may be made to the State for*
5 *the benefit of rural Alaska villages and Alaska Native vil-*
6 *lages.*

7 “(e) *COORDINATION.*—*In carrying out activities under*
8 *this subsection, the Administrator is directed to coordinate*
9 *efforts between the State of Alaska, the Secretary of Housing*
10 *and Urban Development, the Secretary of Health and*
11 *Human Services, the Secretary of the Interior, the Sec-*
12 *retary of Agriculture, and the recipients of grants.*

13 “(f) *FUNDING.*—*There is authorized to be appropriated*
14 *\$25,000,000 for fiscal years beginning after September 30,*
15 *1995, to carry out this section.”*

16 (b) *CONFORMING AMENDMENT.*—*Section 113(g) is*
17 *amended by inserting after “(g)” the following: “DEFINI-*
18 *TIONS.—”*

19 **SEC. 106. AUTHORIZATION OF APPROPRIATIONS FOR**
20 **CHESAPEAKE PROGRAM.**

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

22 (1) *in paragraph (1), by inserting “such sums as*
23 *may be necessary for fiscal years 1991 through 1995,*
24 *and \$3,000,000 per fiscal year for each of fiscal years*
25 *1996 through 2000” after “1990,”; and*

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

5 **SEC. 107. GREAT LAKES MANAGEMENT.**

6 (a) GREAT LAKES RESEARCH COUNCIL.—

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

9 (A) in subsection (a)(3)—

10 (i) by striking subparagraph (E) and
11 inserting the following:

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

14 (ii) by striking “and” at the end of
15 subparagraph (I);

16 (iii) by striking the period at the end
17 of subparagraph (J) and inserting “; and”;
18 and

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

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

1 (B) by striking subsection (d) and inserting
2 the following:

3 “(d) GREAT LAKES RESEARCH COUNCIL.—

4 “(1) ESTABLISHMENT OF COUNCIL.—There is es-
5 tablished a Great Lakes Research Council.

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

7 “(A) shall advise and promote the coordina-
8 tion of Federal Great Lakes research activities to
9 avoid unnecessary duplication and ensure great-
10 er effectiveness in achieving protection of the
11 Great Lakes ecosystem through the goals of the
12 Great Lakes Water Quality Agreement;

13 “(B) not later than 1 year after the date of
14 the enactment of this subparagraph and bienni-
15 ally thereafter and after providing opportunity
16 for public review and comment, shall prepare
17 and provide to interested parties a document
18 that includes—

19 “(i) an assessment of the Great Lakes
20 research activities needed to fulfill the goals
21 of the Great Lakes Water Quality Agree-
22 ment;

23 “(ii) an assessment of Federal expertise
24 and capabilities in the activities needed to
25 fulfill the goals of the Great Lakes Water

1 *Quality Agreement, including an inventory*
2 *of Federal Great Lakes research programs,*
3 *projects, facilities, and personnel; and*

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

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

12 “(D) *shall make recommendations for the*
13 *uniform collection of data for enhancing Great*
14 *Lakes research and management protocols relat-*
15 *ing to the Great Lakes ecosystem;*

16 “(E) *shall advise and cooperate in—*

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

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

23 “(F) *shall ensure that the results, findings,*
24 *and information regarding Great Lakes research*
25 *programs conducted or sponsored by the Federal*

1 *Government are disseminated in a timely man-*
2 *ner, and in useful forms, to interested persons,*
3 *using to the maximum extent practicable mecha-*
4 *nisms in existence on the date of the dissemina-*
5 *tion, such as the Great Lakes Research Inventory*
6 *prepared by the International Joint Commission.*

7 *“(3) MEMBERSHIP.—*

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

13 *“(i) The Agency.*

14 *“(ii) The National Oceanic and Atmos-*
15 *pheric Administration.*

16 *“(iii) The National Biological Service.*

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

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

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

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

3 *“(B) NONVOTING MEMBERS.—At the request*
4 *of a majority of the Council membership, any*
5 *person who is a representative of a Federal agen-*
6 *cy or instrumentality not described in subpara-*
7 *graph (A) or any person who is not a Federal*
8 *employee may serve as a nonvoting member of*
9 *the Council.*

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

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

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

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

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

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

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

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

1 *agency, instrumentality, or entity at the request of*
2 *the Council.*

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

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

10 *(C) in subsection (e)—*

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

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

24 *(D) in subsection (h)—*

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

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

5 (iii) by striking paragraph (3).

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

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

23 (c) *REAUTHORIZATION OF ASSESSMENT AND REMEDI-*
24 *ATION OF CONTAMINATED SEDIMENTS PROGRAM.*—Section
25 118(c)(7) is amended by adding at the end the following:

1 “(D) *REAUTHORIZATION OF ASSESSMENT*
2 *AND REMEDIATION OF CONTAMINATED SEDI-*
3 *MENTS PROGRAM.*—

4 “(i) *IN GENERAL.*—*The Administrator,*
5 *acting through the Program Office, in con-*
6 *sultation and cooperation with the Assistant*
7 *Secretary of the Army having responsibility*
8 *for civil works, shall conduct at least 3 pilot*
9 *projects involving promising technologies*
10 *and practices to remedy contaminated sedi-*
11 *ments (including at least 1 full-scale dem-*
12 *onstration of a remediation technology) at*
13 *sites in the Great Lakes System, as the Ad-*
14 *ministrator determines appropriate.*

15 “(ii) *SELECTION OF SITES.*—*In select-*
16 *ing sites for the pilot projects, the Adminis-*
17 *trator shall give priority consideration to—*

18 “(I) *the Ashtabula River in Ohio;*

19 “(II) *the Buffalo River in New*
20 *York;*

21 “(III) *Duluth and Superior Har-*
22 *bor in Minnesota;*

23 “(IV) *the Fox River in Wisconsin;*

24 “(V) *the Grand Calumet River in*
25 *Indiana; and*

1 “(VI) *Saginaw Bay in Michigan.*

2 “(iii) *DEADLINES.—In carrying out*
3 *this subparagraph, the Administrator*
4 *shall—*

5 “(I) *not later than 18 months*
6 *after the date of the enactment of this*
7 *subparagraph, identify at least 3 sites*
8 *and the technologies and practices to be*
9 *demonstrated at the sites (including at*
10 *least 1 full-scale demonstration of a re-*
11 *mediation technology); and*

12 “(II) *not later than 5 years after*
13 *such date of enactment, complete at*
14 *least 3 pilot projects (including at least*
15 *1 full-scale demonstration of a remedi-*
16 *ation technology).*

17 “(iv) *ADDITIONAL PROJECTS.—The*
18 *Administrator, acting through the Program*
19 *Office, in consultation and cooperation with*
20 *the Assistant Secretary of the Army having*
21 *responsibility for civil works, may conduct*
22 *additional pilot- and full-scale pilot projects*
23 *involving promising technologies and prac-*
24 *tices at sites in the Great Lakes System*
25 *other than the sites selected under clause (i).*

1 “(v) *EXECUTION OF PROJECTS.*—The
2 Administrator may cooperate with the As-
3 sistant Secretary of the Army having re-
4 sponsibility for civil works to plan, engi-
5 neer, design, and execute pilot projects
6 under this subparagraph.

7 “(vi) *NON-FEDERAL CONTRIBUTIONS.*—
8 The Administrator may accept non-Federal
9 contributions to carry out pilot projects
10 under this subparagraph.

11 “(vii) *AUTHORIZATION OF APPROPRIA-*
12 *TIONS.*—There are authorized to be appro-
13 priated to carry out this subparagraph
14 \$3,500,000 for each of fiscal years 1996
15 through 2000.

16 “(E) *TECHNICAL INFORMATION AND ASSIST-*
17 *ANCE.*—

18 “(i) *IN GENERAL.*—The Administrator,
19 acting through the Program Office, may
20 provide technical information and assist-
21 ance involving technologies and practices
22 for remediation of contaminated sediments
23 to persons that request the information or
24 assistance.

1 “(ii) *TECHNICAL ASSISTANCE PRIOR-*
2 *ITIES.—In providing technical assistance*
3 *under this subparagraph, the Adminis-*
4 *trator, acting through the Program Office,*
5 *shall give special priority to requests for in-*
6 *tegrated assessments of, and recommenda-*
7 *tions regarding, remediation technologies*
8 *and practices for contaminated sediments at*
9 *Great Lakes areas of concern.*

10 “(iii) *COORDINATION WITH OTHER*
11 *DEMONSTRATIONS.—The Administrator*
12 *shall—*

13 “(I) *coordinate technology dem-*
14 *onstrations conducted under this sub-*
15 *paragraph with other federally assisted*
16 *demonstrations of contaminated sedi-*
17 *ment remediation technologies; and*

18 “(II) *share information from the*
19 *demonstrations conducted under this*
20 *subparagraph with the other dem-*
21 *onstrations.*

22 “(iv) *OTHER SEDIMENT REMEDIATION*
23 *ACTIVITIES.—Nothing in this subparagraph*
24 *limits the authority of the Administrator to*

1 *carry out sediment remediation activities*
2 *under other laws.*

3 “(v) *AUTHORIZATION OF APPROPRIA-*
4 *TIONS.—There are authorized to be appro-*
5 *priated to carry out this subparagraph*
6 *\$1,000,000 for each of fiscal years 1996*
7 *through 2000.”.*

8 *(d) AUTHORIZATION OF APPROPRIATIONS.—*

9 *(1) RESEARCH AND MANAGEMENT.—Section*
10 *118(e)(3)(B) (33 U.S.C. 1268(e)(3)(B)) is amended by*
11 *inserting before the period at the end the following: “,*
12 *such sums as may be necessary for fiscal year 1995,*
13 *and \$4,000,000 per fiscal year for each of fiscal years*
14 *1996, 1997, and 1998”.*

15 *(2) GREAT LAKES PROGRAMS.—Section 118(h)*
16 *(33 U.S.C. 1268(h)) is amended—*

17 *(A) by striking “and” before “\$25,000,000”;*
18 *and*

19 *(B) by inserting before the period at the end*
20 *of the first sentence the following: “, such sums*
21 *as may be necessary for fiscal years 1992*
22 *through 1995, and \$17,500,000 per fiscal year*
23 *for each of fiscal years 1996 through 2000”.*

1 **TITLE II—CONSTRUCTION**
2 **GRANTS**

3 **SEC. 201. USES OF FUNDS.**

4 (a) *NONPOINT SOURCE PROGRAM.*—Section 201(g)(1)
5 (33 U.S.C. 1281(g)(1)) is amended by striking the period
6 at the end of the first sentence and all that follows through
7 the period at the end of the last sentence and inserting the
8 following: “and for any purpose for which a grant may be
9 made under sections 319(h) and 319(i) of this Act (includ-
10 ing any innovative and alternative approaches for the con-
11 trol of nonpoint sources of pollution).”.

12 (b) *RETROACTIVE ELIGIBILITY.*—Section 201(g)(1) is
13 further amended by adding at the end the following: “The
14 Administrator, with the concurrence of the States, shall de-
15 velop procedures to facilitate and expedite the retroactive
16 eligibility and provision of grant funding for facilities al-
17 ready under construction.”.

18 **SEC. 202. ADMINISTRATION OF CLOSEOUT OF CONSTRUC-**
19 **TION GRANT PROGRAM.**

20 Section 205(g)(1) (33 U.S.C. 1285(g)(1)) is amended
21 by adding at the end the following: “The Administrator
22 may negotiate an annual budget with a State for the pur-
23 pose of administering the closeout of the State’s construction
24 grants program under this title. Sums made available for
25 administering such closeout shall be subtracted from

1 *amounts remaining available for obligation under the*
2 *State’s construction grant program under this title.”.*

3 **SEC. 203. SEWAGE COLLECTION SYSTEMS.**

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

5 *(1) in clause (1) by striking “an existing collec-*
6 *tion system” and inserting “a collection system exist-*
7 *ing on the date of the enactment of the Clean Water*
8 *Amendments of 1995”; and*

9 *(2) in clause (2)—*

10 *(A) by striking “an existing community”*
11 *and inserting “a community existing on such*
12 *date of enactment”; and*

13 *(B) by striking “sufficient existing” and in-*
14 *serting “sufficient capacity existing on such date*
15 *of enactment”.*

16 **SEC. 204. TREATMENT WORKS DEFINED.**

17 *(a) INCLUSION OF OTHER LANDS.—Section 212(2)(A)*
18 *(33 U.S.C. 1292(2)(A)) is amended—*

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

20 *(2) by striking “is used for ultimate” and insert-*
21 *ing “will be used for ultimate”; and*

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

1 (b) *POLICY ON COST EFFECTIVENESS.*—Section 218(a)
2 (33 U.S.C. 1298(a)) is amended by striking “combination
3 of devices and systems” and all that follows through “from
4 such treatment;” and inserting “treatment works;”.

5 **SEC. 205. VALUE ENGINEERING REVIEW.**

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

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

9 (a) *COASTAL LOCALITIES.*—The Administrator shall
10 make grants under title II of the Federal Water Pollution
11 Control Act to appropriate instrumentalities for the pur-
12 pose of construction of treatment works (including combined
13 sewer overflow facilities) to serve coastal localities. No less
14 than \$10,000,000 of the amount of such grants shall be used
15 for water infrastructure improvements in New Orleans, no
16 less than \$3,000,000 of the amount of such grants shall be
17 used for water infrastructure improvements in Bristol
18 County, Massachusetts, and no less than $\frac{1}{3}$ of the amount
19 of such grants shall be used to assist localities that meet
20 both of the following criteria:

21 (1) *NEED.*—A locality that has over
22 \$2,000,000,000 in category I treatment needs docu-
23 mented and accepted in the Environmental Protection
24 Agency’s 1992 Needs Survey database as of February
25 4, 1993.

1 (2) *HARDSHIP.*—A locality that has wastewater
2 user charges, for residential use of 7,000 gallons per
3 month based on Ernst & Young National Water and
4 Wastewater 1992 Rate Survey, greater than 0.65 per-
5 cent of 1989 median household income for the metro-
6 politan statistical area in which such locality is lo-
7 cated as measured by the Bureau of the Census.

8 (b) *FEDERAL SHARE.*—Notwithstanding section
9 202(a)(1) of the Federal Water Pollution Control Act, the
10 Federal share of grants under subsection (a) shall be 80 per-
11 cent of the cost of construction, and the non-Federal share
12 shall be 20 percent of the cost of construction.

13 (c) *SMALL COMMUNITIES.*—The Administrator shall
14 make grants to States for the purpose of providing assist-
15 ance for the construction of treatment works to serve small
16 communities as defined by the State; except that the term
17 “small communities” may not include any locality with a
18 population greater than 75,000. Funds made available to
19 carry out this subsection shall be allotted by the Adminis-
20 trator to the States in accordance with the allotment for-
21 mula contained in section 604(a) of the Federal Water Pol-
22 lution Control Act.

23 (d) *AUTHORIZATION OF APPROPRIATIONS.*—There is
24 authorized to be appropriated for making grants under this
25 section \$300,000,000 for fiscal year 1996. Such sums shall

1 *remain available until expended and shall be equally di-*
 2 *vided between subsections (a) and (c) of this section. Such*
 3 *authorization of appropriation shall take effect only if the*
 4 *total amount appropriated for fiscal year 1996 to carry out*
 5 *title VI of the Federal Water Pollution Control Act is at*
 6 *least \$3,000,000,000.*

7 ***TITLE III—STANDARDS AND***
 8 ***ENFORCEMENT***

9 ***SEC. 301. EFFLUENT LIMITATIONS.***

10 (a) *COMPLIANCE SCHEDULES.*—Section 301(b) (33
 11 *U.S.C. 1311(b)) is amended—*

12 (1) *in paragraph (1)(C) by striking “not later*
 13 *than July 1, 1977,”;*

14 (2) *by striking the period at the end and insert-*
 15 *ing “not later than 3 years after the date such limita-*
 16 *tions are established;”;* and

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

19 (b) *MODIFICATIONS FOR NONCONVENTIONAL POLLUT-*
 20 *ANTS.*—

21 (1) *GENERAL AUTHORITY.*—Section 301(g)(1)
 22 *(33 U.S.C. 1311(g)(1)) is amended by striking “(when*
 23 *determined by the Administrator to be a pollutant*
 24 *covered by subsection (b)(2)(F)) and any other pollut-*
 25 *ant which the Administrator lists under paragraph*

1 *(4) of this subsection” and inserting “and any other*
2 *pollutant covered by subsection (b)(2)(F)”.*

3 *(2) PROCEDURAL REQUIREMENTS FOR LISTING*
4 *AND REMOVAL OF POLLUTANTS.—Section 301(g) (33*
5 *U.S.C. 1311(g)) is further amended by striking para-*
6 *graphs (4) and (5).*

7 *(c) COAL REMINING.—Section 301(p)(2) (33 U.S.C.*
8 *1311(p)(2)) is amended by inserting before the period at*
9 *the end the following: “; except where monitoring dem-*
10 *onstrates that the receiving waters do not meet such water*
11 *quality standards prior to commencement of remining and*
12 *where the applicant submits a plan which demonstrates to*
13 *the satisfaction of the Administrator or the State, as the*
14 *case may be, that identified measures will be utilized to*
15 *improve the existing water quality of the receiving waters”.*

16 *(d) PREEXISTING COAL REMINING OPERATIONS.—Sec-*
17 *tion 301(p) (33 U.S.C. 1311) is amended by adding at the*
18 *end the following:*

19 *“(5) PREEXISTING COAL REMINING OPER-*
20 *ATIONS.—Any operator of a coal mining operation*
21 *who conducted remining at a site on which coal min-*
22 *ing originally was conducted before the effective date*
23 *of the Surface Mining Control and Reclamation Act*
24 *of 1977 shall be deemed to be in compliance with sec-*
25 *tions 301, 302, 306, 307, and 402 of this Act if—*

1 “(A) such operator commenced remining at
2 such operation prior to the adoption of this sub-
3 section in a State program approved under sec-
4 tion 402 and performed such remining under a
5 permit pursuant to such Act; and

6 “(B) the post-mining discharges from such
7 operation do not add pollutants to the waters of
8 the United States in excess of those pollutants
9 discharged from the remined area before the coal
10 remining operation began.”.

11 **SEC. 302. POLLUTION PREVENTION OPPORTUNITIES.**

12 (a) *INNOVATIVE PRODUCTION PROCESSES.*—Sub-
13 section (k) of section 301 (33 U.S.C. 1311(k)) is amended
14 to read as follows:

15 “(k) *INNOVATIVE PRODUCTION PROCESSES, TECH-*
16 *NOLOGIES, AND METHODS.*—

17 “(1) *IN GENERAL.*—In the case of any point
18 source subject to a permit under section 402, the Ad-
19 ministratoꝛ, with the consent of the State in which
20 the point source is located, or the State in consulta-
21 tion with the Administrator, in the case of a State
22 with an approved program under section 402, may,
23 at the request of the permittee and after public notice
24 and opportunity for comment, extend the deadline for
25 the point source to comply with any limitation estab-

1 *lished pursuant to subsection (b)(1)(A), (b)(2)(A), or*
2 *(b)(2)(E) and make other appropriate modifications*
3 *to the conditions of the point source permit, for the*
4 *purpose of encouraging the development and use of an*
5 *innovative pollution prevention technology (including*
6 *an innovative production process change, innovative*
7 *pollution control technology, or innovative recycling*
8 *method) that has the potential to—*

9 *“(A) achieve an effluent reduction which is*
10 *greater than that required by the limitation oth-*
11 *erwise applicable;*

12 *“(B) meet the applicable effluent limitation*
13 *to water while achieving a reduction of total*
14 *emissions to other media which is greater than*
15 *that required by the otherwise applicable emis-*
16 *sions limitations for the other media;*

17 *“(C) meet the applicable effluent limitation*
18 *to water while achieving a reduction in energy*
19 *consumption; or*

20 *“(D) achieve the required reduction with the*
21 *potential for significantly lower costs than the*
22 *systems determined by the Administrator to be*
23 *economically achievable.*

24 *“(2) DURATION OF EXTENSIONS.—The extension*
25 *of the compliance deadlines under paragraph (1) shall*

1 *not extend beyond the period necessary for the owner*
2 *of the point source to install and use the innovative*
3 *process, technology, or method in full-scale production*
4 *operations, but in no case shall the compliance exten-*
5 *sions extend beyond 3 years from the date for compli-*
6 *ance with the otherwise applicable limitations.*

7 “(3) *CONSEQUENCES OF FAILURE.*—*In determin-*
8 *ing the amount of any civil or administrative penalty*
9 *pursuant to section 309(d) or 309(g) for any viola-*
10 *tions of a section 402 permit during the extension pe-*
11 *riod referred to in paragraph (1) that are caused by*
12 *the unexpected failure of an innovative process, tech-*
13 *nology, or method, a court or the Administrator, as*
14 *appropriate, shall reduce or eliminate the penalty for*
15 *such violation if the permittee has made good-faith ef-*
16 *forts both to implement the innovation and to comply*
17 *with any interim limitations.*

18 “(4) *REPORT.*—*Not later than 1 year after the*
19 *date of the enactment of this subsection, the Adminis-*
20 *trator shall review, analyze, and compile in a report*
21 *information on innovative and alternative tech-*
22 *nologies which are available for preventing and re-*
23 *ducing pollution of navigable waters, submit such re-*
24 *port to Congress, and publish in the Federal Register*
25 *a summary of such report and a notice of the avail-*

1 *ability of such report. The Administrator shall annu-*
2 *ally update the report prepared under this para-*
3 *graph, submit the updated report to Congress, and*
4 *publish in the Federal Register a summary of the up-*
5 *dated report and a notice of its availability.”.*

6 *(b) POLLUTION PREVENTION PROGRAMS.—Section*
7 *301 (33 U.S.C. 1311) is amended—*

8 *(1) in subsection (l) by striking “subsection (n)”*
9 *and inserting “subsections (n), (q), and (r)”;* and

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

11 *“(q) POLLUTION PREVENTION PROGRAMS.—*

12 *“(1) IN GENERAL.—Notwithstanding any other*
13 *provision of this Act, the Administrator (with the*
14 *concurrence of the State) or a State with an approved*
15 *program under section 402, after public notice and*
16 *an opportunity for comment, may issue a permit*
17 *under section 402 which modifies the requirements of*
18 *subsection (b) of this section or section 306 and makes*
19 *appropriate modifications to the conditions of the*
20 *permit, or may modify the requirements of section*
21 *307, if the Administrator or State determines that*
22 *pollution prevention measures or practices (including*
23 *recycling, source reduction, and other measures to re-*
24 *duce discharges or other releases of pollutants to the*
25 *environment beyond those otherwise required by law)*

1 *together with such modifications will achieve an over-*
2 *all reduction in emissions to the environment (includ-*
3 *ing emissions to water and air and disposal of solid*
4 *wastes) from the facility at which the permitted dis-*
5 *charge is located that is greater than would otherwise*
6 *be achievable if the source complied with the require-*
7 *ments of subsection (b) or section 306 or 307 and will*
8 *result in an overall net benefit to the environment.*

9 “(2) *TERM OF MODIFICATION.*—A modification
10 *made pursuant to paragraph (1) shall extend for the*
11 *term of the permit or, in the case of modifications*
12 *under section 307(b), for up to 10 years, and may be*
13 *extended further if the Administrator or State deter-*
14 *mines at the expiration of the initial modifications*
15 *that such modifications will continue to enable the*
16 *source to achieve greater emissions reduction than*
17 *would otherwise be attainable.*

18 “(3) *NONEXTENSION OF MODIFICATION.*—Upon
19 *expiration of a modification that is not extended fur-*
20 *ther under paragraph (2), the source shall have a rea-*
21 *sonable period of time, not to exceed 2 years, to come*
22 *into compliance with otherwise applicable require-*
23 *ments of this Act.*

24 “(4) *REPORT.*—Not later than 3 years after the
25 *date of the enactment of this subsection, the Adminis-*

1 *trator shall submit to Congress a report on the imple-*
2 *mentation of this subsection and the emissions reduc-*
3 *tions achieved as a result of modifications made pur-*
4 *suant to this subsection.”.*

5 *(c) POLLUTION REDUCTION AGREEMENTS.—Section*
6 *301 is further amended by adding at the end the following:*

7 *“(r) POLLUTION REDUCTION AGREEMENTS.—*

8 *“(1) IN GENERAL.—Notwithstanding any other*
9 *provision of this Act, the Administrator (with the*
10 *concurrence of the State) or a State with an approved*
11 *program under section 402, after public notice and*
12 *an opportunity for comment, may issue a permit*
13 *under section 402 which modifies the requirements of*
14 *subsection (b) of this section or section 306 and makes*
15 *appropriate modifications to the conditions of the*
16 *permit, or may modify the requirements of section*
17 *307, if the Administrator or State determines that the*
18 *owner or operator of the source of the discharge has*
19 *entered into a binding contractual agreement with*
20 *any other source of discharge in the same watershed*
21 *to implement pollution reduction controls or measures*
22 *beyond those otherwise required by law and that the*
23 *agreement is being implemented through modifica-*
24 *tions of a permit issued under section 402 to the other*
25 *source, by modifications of the requirements of section*

1 307 applicable to the other source, or by nonpoint
2 source control practices and measures under section
3 319 applicable to the other source. The Administrator
4 or State may modify otherwise applicable require-
5 ments pursuant to this section whenever the Adminis-
6 trator or State determines that such pollution reduc-
7 tion control or measures will result collectively in an
8 overall reduction in discharges to the watershed that
9 is greater than would otherwise be achievable if the
10 parties to the pollution reduction agreement each
11 complied with applicable requirements of subsection
12 (b), section 306 or 307 resulting in a net benefit to
13 the watershed.

14 “(2) NOTIFICATION TO AFFECTED STATES.—Be-
15 fore issuing or modifying a permit under this sub-
16 section allowing discharges into a watershed that is
17 within the jurisdiction of 2 or more States, the Ad-
18 ministrator or State shall provide written notice of
19 the proposed permit to all States with jurisdiction
20 over the watershed. The Administrator or State shall
21 not issue or modify such permit unless all States with
22 jurisdiction over the watershed have approved such
23 permit or unless such States do not disapprove such
24 permit within 90 days of receiving such written
25 notice.

1 “(3) *TERM OF MODIFICATION.*—Modifications
2 *made pursuant to this subsection shall extend for the*
3 *term of the modified permits or, in the case of modi-*
4 *fications under section 307, for up to 10 years, and*
5 *may be extended further if the Administrator or State*
6 *determines, at the expiration of the initial modifica-*
7 *tions, that such modifications will continue to enable*
8 *the sources trading credits to achieve greater reduc-*
9 *tion in discharges to the watershed collectively than*
10 *would otherwise be attainable.*

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

17 “(5) *LIMITATION ON STATUTORY CONSTRUC-*
18 *TION.*—Nothing in this subsection shall be construed
19 *to authorize the Administrator or a State, as appro-*
20 *priate, to compel trading among sources or to impose*
21 *nonpoint source control practices without the consent*
22 *of the nonpoint source discharger.*

23 “(6) *REPORT.*—Not later than 3 years after the
24 *date of the enactment of this subsection, the Adminis-*
25 *trator shall submit a report to Congress on the imple-*

1 *mentation of paragraph (1) and the discharge reduc-*
2 *tions achieved as a result of modifications made pur-*
3 *suant to paragraph (1).”.*

4 *(d) ANTIBACKSLIDING.—Section 402(o)(2) (33 U.S.C.*
5 *1342(o)(2)) is amended—*

6 *(1) in subparagraph (D)—*

7 *(A) by inserting “301(q), 301(r),” after*
8 *“301(n),”; and*

9 *(B) by striking “or” the last place it ap-*
10 *pears;*

11 *(2) in subparagraph (E) by striking the period*
12 *at the end and inserting “; or”; and*

13 *(3) by inserting after subparagraph (E) the fol-*
14 *lowing:*

15 *“(F) the permittee is taking pollution pre-*
16 *vention or water conservation measures that*
17 *produce a net environmental benefit, including,*
18 *but not limited to, measures that result in the*
19 *substitution of one pollutant for another pollut-*
20 *ant; increase the concentration of a pollutant*
21 *while decreasing the discharge flow; or increase*
22 *the discharge of a pollutant or pollutants from*
23 *one or more outfalls at a permittee’s facility,*
24 *when accompanied by offsetting decreases in the*

1 discharge of a pollutant or pollutants from other
2 outfalls at the permittee's facility.”

3 (e) *ANTIDegradation REVIEW*.—Section 303(d) (33
4 U.S.C. 1313(d)) is amended by adding at the end the follow-
5 ing:

6 “(5) *ANTIDegradation REVIEW*.—The Adminis-
7 trator may not require a State, in implementing the
8 antidegradation policy established under this section,
9 to conduct an antidegradation review in the case of—

10 “(A) increases in a discharge which are au-
11 thorized under section 301(g), 301(k), 301(q),
12 301(r), or 301(t);

13 “(B) increases in the concentration of a pol-
14 lutant in a discharge caused by a reduction in
15 wastewater flow;

16 “(C) increases in the discharge of a pollut-
17 ant or pollutants from one or more outfalls at a
18 permittee's facility, when accompanied by offset-
19 ting decreases in the discharge of a pollutant or
20 pollutants from other outfalls at the permittee's
21 facility;

22 “(D) reissuance of a permit where there is
23 no increase in existing effluent limitations and,
24 if a new effluent limitation is being added to the
25 permit, where the new limitation is for a pollut-

1 ant that is newly found in an existing discharge
2 due solely to improved monitoring methods; or

3 “(E) a new or increased discharge which is
4 temporary or short-term or which the State de-
5 termines represents an insignificant increased
6 pollutant loading.”.

7 (f) *INNOVATIVE PRETREATMENT PRODUCTION PROC-*
8 *ESSES.*—Subsection (e) of section 307 (33 U.S.C. 1317(e))
9 *is amended to read as follows:*

10 “(e) *INNOVATIVE PRETREATMENT PRODUCTION PROC-*
11 *ESSES, TECHNOLOGIES, AND METHODS.*—

12 “(1) *IN GENERAL.*—In the case of any facility
13 that proposes to comply with the national categorical
14 pretreatment standards developed under subsection (b)
15 by applying an innovative pollution prevention tech-
16 nology (including an innovative production process
17 change, innovative pollution control technology, or in-
18 novative recycling method) that meets the require-
19 ments of section 301(k), the Administrator or the
20 State, in consultation with the Administrator, in the
21 case of a State which has a pretreatment program ap-
22 proved by the Administrator, upon application of the
23 facility and with the concurrence of the treatment
24 works into which the facility introduces pollutants,
25 may extend the deadlines for compliance with the ap-

1 *plicable national categorical pretreatment standards*
2 *established under this section and make other appro-*
3 *prate modifications to the facility's pretreatment re-*
4 *quirements if the Administrator or the State, in con-*
5 *sultation with the Administrator, in the case of a*
6 *State which has a pretreatment program approved by*
7 *the Administrator determines that—*

8 *“(A) the treatment works will require the*
9 *owner of the source to conduct such tests and*
10 *monitoring during the period of the modification*
11 *as are necessary to ensure that the modification*
12 *does not cause or contribute to a violation by the*
13 *treatment works under section 402 or a violation*
14 *of section 405;*

15 *“(B) the treatment works will require the*
16 *owner of the source to report on progress at pre-*
17 *scribed milestones during the period of modifica-*
18 *tion to ensure that attainment of the pollution*
19 *reduction goals and conditions set forth in this*
20 *section is being achieved; and*

21 *“(C) the proposed extensions or modifica-*
22 *tions will not cause or contribute to any viola-*
23 *tion of a permit granted to the treatment works*
24 *under section 402, any violation of section 405,*
25 *or a pass through of pollutants such that water*

1 *quality standards are exceeded in the body of*
2 *water into which the treatment works discharges.*

3 “(2) *INTERIM LIMITATIONS.*—*A modification*
4 *granted pursuant to paragraph (1) shall include in-*
5 *terim standards that shall apply during the tem-*
6 *porary period of the modification and shall be the*
7 *more stringent of—*

8 “(A) *those necessary to ensure that the dis-*
9 *charge will not interfere with the operation of*
10 *the treatment works;*

11 “(B) *those necessary to ensure that the dis-*
12 *charge will not pass through pollutants at a level*
13 *that will cause water quality standards to be ex-*
14 *ceeded in the navigable waters into which the*
15 *treatment works discharges;*

16 “(C) *the limits established in the previously*
17 *applicable control mechanism, in those cases in*
18 *which the limit from which a modification is*
19 *being sought is more stringent than the limit es-*
20 *tablished in a previous control mechanism appli-*
21 *cable to such source.*

22 “(3) *DURATION OF EXTENSIONS AND MODIFICA-*
23 *TIONS.*—*The extension of the compliance deadlines*
24 *and the modified pretreatment requirements estab-*
25 *lished pursuant to paragraph (1) shall not extend be-*

1 *yond the period necessary for the owner to install and*
2 *use the innovative process, technology, or method in*
3 *full-scale production operation, but in no case shall*
4 *the compliance extensions and modified requirements*
5 *extend beyond 3 years from the date for compliance*
6 *with the otherwise applicable standards.*

7 “(4) *CONSEQUENCES OF FAILURE.*—*In determin-*
8 *ing the amount of any civil or administrative penalty*
9 *pursuant to section 309(d) or 309(g) for any*
10 *pretreatment violations, or violations by a publicly*
11 *owned treatment works, caused by the unexpected fail-*
12 *ure of an innovative process, technology, or method,*
13 *a court or the Administrator, as appropriate, shall*
14 *reduce, or eliminate, the penalty amount for such vio-*
15 *lations provided the facility made good-faith efforts*
16 *both to implement the innovation and to comply with*
17 *the interim standards and, in the case of a publicly*
18 *owned treatment works, good-faith efforts were made*
19 *to implement the pretreatment program.”.*

20 **SEC. 303. WATER QUALITY STANDARDS AND IMPLEMENTA-**
21 **TION PLANS.**

22 (a) *NO REASONABLE RELATIONSHIP.*—*Section 303(b)*
23 *(33 U.S.C. 1313(b)) is amended by adding at the end the*
24 *following:*

1 “(3) *NO REASONABLE RELATIONSHIP.*—No water
2 *quality standard shall be established under this sub-*
3 *section where there is no reasonable relationship be-*
4 *tween the costs and anticipated benefits of attaining*
5 *such standard.”.*

6 **(b) *REVISION OF STATE STANDARDS.***—

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

16 **(2) *FACTORS.***—Section 303(c) (33 U.S.C.
17 1313(c)) is amended by striking paragraph (2)(A)
18 and inserting the following:

19 “(2) *STATE ADOPTION OF WATER QUALITY*
20 *STANDARDS.*—

21 “(A) *IN GENERAL.*—

22 “(i) *SUBMISSION TO ADMINIS-*
23 *TRATOR.*—Whenever the State revises or
24 adopts a new water quality standard, such

1 *standard shall be submitted to the Adminis-*
2 *trator.*

3 “(ii) *DESIGNATED USES AND WATER*
4 *QUALITY CRITERIA.—The revised or new*
5 *standard shall consist of the designated uses*
6 *of the navigable waters involved and the*
7 *water quality criteria for such waters based*
8 *upon such uses.*

9 “(iii) *PROTECTION OF HUMAN*
10 *HEALTH.—The revised or new standard*
11 *shall protect human health and the environ-*
12 *ment and enhance water quality.*

13 “(iv) *DEVELOPMENT OF STANDARDS.—*
14 *In developing revised or new standards, the*
15 *State may consider information reasonably*
16 *available on the likely social, economic, en-*
17 *ergy use, and environmental cost associated*
18 *with attaining such standards in relation to*
19 *the benefits to be attained. The State may*
20 *provide a description of the considerations*
21 *used in the establishment of the standards.*

22 “(v) *RECORD OF STATE’S REVIEW.—*
23 *The record of a State’s review under para-*
24 *graph (1) of an existing standard or adop-*
25 *tion of a new standard that includes water*

1 *quality criteria issued or revised by the Ad-*
2 *ministrator after the date of the enactment*
3 *of this sentence shall contain available esti-*
4 *mates of costs of compliance with the water*
5 *quality criteria published by the Adminis-*
6 *trator under section 304(a)(12) and any*
7 *comments received by the State on such esti-*
8 *mate.*

9 “(vi) *LIMITATION ON STATUTORY CON-*
10 *STRUCTION.—Nothing in this subsection*
11 *shall be construed to limit or delay the use*
12 *of any guidance of the Administrator inter-*
13 *preting water quality criteria to allow the*
14 *use of a dissolved metals concentration*
15 *measurement or similar adjustment in de-*
16 *termining compliance with a water quality*
17 *standard or establishing effluent limita-*
18 *tions.”.*

19 (c) *REVISION OF DESIGNATED USES.—Section*
20 *303(c)(2) (33 U.S.C. 1313(c)(2)) is amended by adding at*
21 *the end the following:*

22 “(C) *REVISION OF DESIGNATED USES.—*

23 “(i) *REGULATIONS.—After consultation*
24 *with State officials and not later than 1*
25 *year after the date of the enactment of this*

1 *subparagraph, the Administrator shall pro-*
2 *pose, and not later than 2 years after such*
3 *date of enactment shall issue, a revision to*
4 *the Administrator’s regulations regarding*
5 *designation of uses of waters by States.*

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

18 *“(iii) WATERS ATTAINING DESIGNATED*
19 *USES.—For navigable waters attaining the*
20 *designated use applicable to such waters for*
21 *all pollutants, the Administrator shall allow*
22 *a State to modify the designated use only if*
23 *the State determines that continued mainte-*
24 *nance of the water quality necessary to sup-*
25 *port the designated use will result in sig-*

1 *nificant social or economic dislocations sub-*
2 *stantially out of proportion to the benefits*
3 *to be achieved from maintenance of the des-*
4 *ignated use.*

5 *“(iv) MODIFICATION OF POINT SOURCE*
6 *LIMITS.—Notwithstanding any other provi-*
7 *sion of this Act, water quality based limits*
8 *applicable to point sources may be modified*
9 *as appropriate to conform to any modified*
10 *designated use under this section.”.*

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

12 *(a) LABORATORY BIOLOGICAL MONITORING CRI-*
13 *TERIA.—Subparagraph (B) of section 303(c)(2) (33 U.S.C.*
14 *1313(c)(2)) is amended—*

15 *(1) by inserting “CRITERIA FOR TOXIC POLLUT-*
16 *ANTS.—” after “(B)”;*

17 *(2) by moving such subparagraph 4 ems to the*
18 *right;*

19 *(3) by inserting after the third sentence the fol-*
20 *lowing: “Criteria for whole effluent toxicity based on*
21 *laboratory biological monitoring or assessment meth-*
22 *ods shall employ an aquatic species indigenous, or*
23 *representative of indigenous, and relevant to the type*
24 *of waters covered by such criteria and shall take into*
25 *account the accepted analytical variability associated*

1 *with such methods in defining an exceedance of such*
2 *criteria.”.*

3 **(b) PERMIT PROCEDURES.**—*Section 402 is amended*
4 *by adding at the end the following:*

5 **“(q) BIOLOGICAL MONITORING PROCEDURES.**—

6 **“(1) RESPONDING TO EXCEEDANCES.**—*If a per-*
7 *mit issued under this section contains terms, condi-*
8 *tions, or limitations requiring biological monitoring*
9 *or whole effluent toxicity testing designed to meet cri-*
10 *teria for whole effluent toxicity based on laboratory*
11 *biological monitoring or assessment methods described*
12 *in section 303(c)(2)(B), the permit shall establish pro-*
13 *cedures for responding to an exceedance of such cri-*
14 *teria that includes analysis, identification, reduction,*
15 *or, where feasible, elimination of any effluent toxicity.*
16 *The failure of a biological monitoring test or whole ef-*
17 *fluent toxicity test shall not result in a finding of a*
18 *violation under this Act, unless it is demonstrated*
19 *that the permittee has failed to comply with such pro-*
20 *cedures.*

21 **“(2) DISCONTINUANCE OF USE.**—*The permit*
22 *shall allow the permittee to discontinue such proce-*
23 *dures—*

24 **“(A) if the permittee is an entity, other**
25 *than a publicly owned treatment works, if the*

1 *permittee demonstrates through a field bio-assess-*
2 *ment study that a balanced and healthy popu-*
3 *lation of aquatic species indigenous, or rep-*
4 *resentative of indigenous, and relevant to the*
5 *type of waters exists in the waters that are af-*
6 *ected by the discharge, and if the applicable*
7 *water quality standards are met for such waters;*
8 *or*

9 *“(B) if the permittee is a publicly owned*
10 *treatment works, the source or cause of such tox-*
11 *icity cannot, after thorough investigation, be*
12 *identified.”.*

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

15 *(1) by striking “, after” and all that follows*
16 *through “1987,”; and*

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

19 ***SEC. 305. ARID AREAS.***

20 *(a) CONSTRUCTED WATER CONVEYANCES.—Section*
21 *303(c)(2) (33 U.S.C. 1313(c)(2)) is amended by adding at*
22 *the end the following:*

23 *“(D) STANDARDS FOR CONSTRUCTED*
24 *WATER CONVEYANCES.—*

1 “(i) *RELEVANT FACTORS.*—If a State
2 *exercises jurisdiction over constructed water*
3 *conveyances in establishing standards under*
4 *this section, the State may consider the fol-*
5 *lowing:*

6 “(I) *The existing and planned*
7 *uses of water transported in a convey-*
8 *ance system.*

9 “(II) *Any water quality impacts*
10 *resulting from any return flow from a*
11 *constructed water conveyance to navi-*
12 *gable waters and the need to protect*
13 *downstream users.*

14 “(III) *Management practices nec-*
15 *essary to maintain the conveyance sys-*
16 *tem.*

17 “(IV) *State or regional water re-*
18 *sources management and water con-*
19 *servation plans.*

20 “(V) *The authorized purpose for*
21 *the constructed conveyance.*

22 “(ii) *RELEVANT USES.*—If a State
23 *adopts or reviews water quality standards*
24 *for constructed water conveyances, it shall*
25 *not be required to establish recreation,*

1 *aquatic life, or fish consumption uses for*
2 *such systems if the uses are not existing or*
3 *reasonably foreseeable or such uses impede*
4 *the authorized uses of the conveyance sys-*
5 *tem.”.*

6 *(b) CRITERIA AND GUIDANCE FOR EPHEMERAL AND*
7 *EFFLUENT-DEPENDENT STREAMS.—Section 304(a) (33*
8 *U.S.C. 1314(a)) is amended by adding at the end the follow-*
9 *ing:*

10 *“(9) CRITERIA AND GUIDANCE FOR EPHEMERAL*
11 *AND EFFLUENT-DEPENDENT STREAMS.—*

12 *“(A) DEVELOPMENT.—Not later than 2*
13 *years after the date of the enactment of this*
14 *paragraph, and after providing notice and op-*
15 *portunity for public comment, the Administrator*
16 *shall develop and publish—*

17 *“(i) criteria for ephemeral and efflu-*
18 *ent-dependent streams; and*

19 *“(ii) guidance to the States on develop-*
20 *ment and adoption of water quality stand-*
21 *ards applicable to such streams.*

22 *“(B) FACTORS.—The criteria and guidance*
23 *developed under subparagraph (A) shall take*
24 *into account the limited ability of ephemeral and*
25 *effluent-dependent streams to support aquatic life*

1 *and certain designated uses, shall include consid-*
2 *eration of the role the discharge may play in*
3 *maintaining the flow or level of such waters, and*
4 *shall promote the beneficial use of reclaimed*
5 *water pursuant to section 101(a)(10).”.*

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

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

14 *“(21) The term ‘effluent-dependent stream’ means a*
15 *stream or a segment thereof—*

16 *“(A) with respect to which the flow (based on the*
17 *annual average expected flow, determined by calculat-*
18 *ing the average mode over a 10-year period) is pri-*
19 *marily attributable to the discharge of treated*
20 *wastewater;*

21 *“(B) that, in the absence of a discharge of treat-*
22 *ed wastewater and other primary anthropogenic sur-*
23 *face or subsurface flows, would be an ephemeral*
24 *stream; or*

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

3 “(22) The term ‘ephemeral stream’ means a stream or
4 segments thereof that flows periodically in response to pre-
5 cipitation, snowmelt, or runoff.

6 “(23) The term ‘constructed water conveyance’ means
7 a manmade water transport system constructed for the pur-
8 pose of transporting water in a waterway that is not and
9 never was a natural perennial waterway.”.

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

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

13 “(C) TOTAL MAXIMUM DAILY LOADS.—

14 “(i) STATE DETERMINATION OF REA-
15 SONABLE PROGRESS.—Each State shall es-
16 tablish, to the extent and according to a
17 schedule the State determines is necessary to
18 achieve reasonable progress toward the at-
19 tainment or maintenance of water quality
20 standards, for the waters identified in para-
21 graph (1)(A) of this subsection, and in ac-
22 cordance with the priority ranking, the
23 total maximum daily load, for those pollut-
24 ants which the Administrator identifies

1 under section 304(a)(2) as suitable for such
2 calculation.

3 “(ii) *PHASED TOTAL MAXIMUM DAILY*
4 *LOADS.*—Total maximum daily loads may
5 reflect load reductions the State expects will
6 be realized over time resulting from antici-
7 pated implementation of best management
8 practices, storm water controls, or other
9 nonpoint or point source controls; so long as
10 by December 31, 2015, such loads are estab-
11 lished at levels necessary to implement the
12 applicable water quality standards with
13 seasonal variations and a margin of safety.

14 “(iii) *CONSIDERATIONS.*—In establish-
15 ing each load, the State shall consider the
16 availability of scientifically valid data and
17 information, the projected reductions
18 achievable by control measures or practices
19 for all sources or categories of sources, and
20 the relative cost-effectiveness of implement-
21 ing such control measures or practices for
22 such sources.”.

23 **SEC. 307. REVISION OF CRITERIA, STANDARDS, AND LIMITA-**
24 **TIONS.**

25 (a) *REVISION OF WATER QUALITY CRITERIA.*—

1 (1) *FACTORS.*—Section 304(a)(1) (33 U.S.C.
2 1314(a)(1)) is amended—

3 (A) by striking “and (C)” and inserting
4 “(C)”; and

5 (B) by striking the period at the end and
6 inserting the following: “(D) on the organisms
7 that are likely to be present in various
8 ecosystems; (E) on the bioavailability of pollut-
9 ants under various natural and man induced
10 conditions; (F) on the magnitude, duration, and
11 frequency of exposure reasonably required to in-
12 duce the adverse effects of concern; and (G) on
13 the bioaccumulation threat presented under var-
14 ious natural conditions.”.

15 (2) *CERTIFICATION.*—Section 304(a) (33 U.S.C.
16 1314(a)) is amended by adding at the end the follow-
17 ing:

18 “(10) *CERTIFICATION.*—

19 “(A) *IN GENERAL.*—Not later than 5 years
20 after the date of the enactment of this paragraph,
21 and at least once every 5 years thereafter, the
22 Administrator shall publish a written certifi-
23 cation that the criteria for water quality devel-
24 oped under paragraph (1) reflect the latest and
25 best scientific knowledge.

1 “(B) *UPDATING OF EXISTING CRITERIA.*—
2 *Not later than 90 days after the date of the en-*
3 *actment of this paragraph, the Administrator*
4 *shall publish a schedule for updating, by not*
5 *later than 5 years after the date of the enactment*
6 *of this paragraph, the criteria for water quality*
7 *developed under paragraph (1) before the date of*
8 *the enactment of this subsection.*

9 “(C) *DEADLINE FOR REVISION OF CERTAIN*
10 *CRITERIA.*—*Not later than 1 year after the date*
11 *of the enactment of this paragraph, the Adminis-*
12 *trator shall revise and publish criteria under*
13 *paragraph (1) for ammonia, chronic whole efflu-*
14 *ent toxicity, and metals as necessary to allow the*
15 *Administrator to make the certification under*
16 *subparagraph (A).”.*

17 **(b) *CONSIDERATION OF CERTAIN CONTAMINANTS.***—
18 *Section 304(a) (33 U.S.C. 1314(a)) is amended by adding*
19 *at the end the following:*

20 “(11) *CONSIDERATION OF CERTAIN CONTAMI-*
21 *NANTS.*—*In developing and revising criteria for water*
22 *quality criteria under paragraph (1), the Adminis-*
23 *trator shall consider addressing, at a minimum, each*
24 *contaminant regulated pursuant to section 1412 of*
25 *the Public Health Service Act (42 U.S.C. 300g-1).”.*

1 (c) *COST ESTIMATE.*—Section 304(a) (33 U.S.C.
2 1314(a)) is further amended by adding at the end the fol-
3 lowing:

4 “(12) *COST ESTIMATE.*—Whenever the Adminis-
5 trator issues or revises a criteria for water quality
6 under paragraph (1), the Administrator, after con-
7 sultation with Federal and State agencies and other
8 interested persons, shall develop and publish an esti-
9 mate of the costs that would likely be incurred if
10 sources were required to comply with the criteria and
11 an analysis to support the estimate. Such analysis
12 shall meet the requirements relevant to the estimation
13 of costs published in guidance issued under section
14 324(b).”.

15 (d) *REVISION OF EFFLUENT LIMITATIONS.*—

16 (1) *ELIMINATION OF REQUIREMENT FOR ANNUAL*
17 *REVISION.*—Section 304(b) (33 U.S.C. 1314(b)) is
18 amended in the matter preceding paragraph (1) by
19 striking “and, at least annually thereafter,” and in-
20 sserting “and thereafter shall”.

21 (2) *SPECIAL RULE.*—Section 304(b) (33 U.S.C.
22 1314(b)) is amended by striking the period at the end
23 of the first sentence and inserting the following: “; ex-
24 cept that guidelines issued under paragraph (1)(A)
25 addressing pollutants identified pursuant to sub-

1 *section (a)(4) shall not be revised after February 15,*
2 *1995, to be more stringent unless such revised guide-*
3 *lines meet the requirements of paragraph (4)(A).”.*

4 *(e) SCHEDULE FOR REVIEW OF GUIDELINES.—Section*
5 *304(m)(1) (33 U.S.C. 1314(m)(1)) is amended to read as*
6 *follows:*

7 *“(1) PUBLICATION.—Not later than 3 years after*
8 *the date of the enactment of the Clean Water Amend-*
9 *ments of 1995, the Administrator shall publish in the*
10 *Federal Register a plan which shall—*

11 *“(A) identify categories of sources discharg-*
12 *ing pollutants for which guidelines under sub-*
13 *section (b)(2) of this section and section 306 have*
14 *not been previously published;*

15 *“(B) establish a schedule for determining*
16 *whether such discharge presents a significant*
17 *risk to human health and the environment and*
18 *whether such risk is sufficient, when compared to*
19 *other sources of pollutants in navigable waters,*
20 *to warrant regulation by the Administrator; and*

21 *“(C) establish a schedule for issuance of ef-*
22 *fluent guidelines for those categories identified*
23 *pursuant to subparagraph (B).”.*

24 *(f) REVISION OF PRETREATMENT REQUIREMENTS.—*
25 *Section 304(g)(1) (33 U.S.C. 1314(g)(1)) is amended by*

1 *striking “and review at least annually thereafter and, if*
2 *appropriate, revise” and insert “and thereafter revise, as*
3 *appropriate.”.*

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

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

15 **SEC. 308. INFORMATION AND GUIDELINES.**

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

1 **SEC. 309. SECONDARY TREATMENT.**

2 (a) *COASTAL DISCHARGES.*—Section 304(d) (33
3 U.S.C. 1314(d)) is amended by adding at the end the follow-
4 ing:

5 “(5) *COASTAL DISCHARGES.*—For purposes of
6 this subsection, any municipal wastewater treatment
7 facility shall be deemed the equivalent of a secondary
8 treatment facility if each of the following require-
9 ments is met:

10 “(A) The facility employs chemically en-
11 hanced primary treatment.

12 “(B) The facility, on the date of the enact-
13 ment of this paragraph, discharges through an
14 ocean outfall into an open marine environment
15 greater than 4 miles offshore into a depth greater
16 than 300 feet.

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

20 “(D) The facility’s discharge will be subject
21 to an ocean monitoring program acceptable to
22 relevant Federal and State regulatory agencies.”.

23 (b) *MODIFICATION OF SECONDARY TREATMENT RE-*
24 *QUIREMENTS.*—

25 (1) *IN GENERAL.*—Section 301 (33 U.S.C. 1311)
26 is amended by adding at the end the following:

1 “(s) *MODIFICATION OF SECONDARY TREATMENT RE-*
2 *QUIREMENTS.*—

3 “(1) *IN GENERAL.*—*The Administrator, with the*
4 *concurrence of the State, shall issue a 10-year permit*
5 *under section 402 which modifies the requirements of*
6 *subsection (b)(1)(B) of this section with respect to the*
7 *discharge of any pollutant from a publicly owned*
8 *treatment works into marine waters which are at*
9 *least 150 feet deep through an ocean outfall which dis-*
10 *charges at least 1 mile offshore, if the applicant dem-*
11 *onstrates that—*

12 “(A) *there is an applicable ocean plan and*
13 *the facility’s discharge is in compliance with all*
14 *local and State water quality standards for the*
15 *receiving waters;*

16 “(B) *the facility’s discharge will be subject*
17 *to an ocean monitoring program determined to*
18 *be acceptable by relevant Federal and State regu-*
19 *latory agencies;*

20 “(C) *the applicant has an Agency approved*
21 *pretreatment plan in place; and*

22 “(D) *the applicant, at the time such modi-*
23 *fication becomes effective, will be discharging ef-*
24 *fluent which has received at least chemically en-*
25 *hanced primary treatment and achieves a*

1 *monthly average of 75 percent removal of sus-*
2 *pending solids.*

3 “(2) *DISCHARGE OF ANY POLLUTANT INTO MA-*
4 *RINE WATERS DEFINED.*—*For purposes of this sub-*
5 *section, the term ‘discharge of any pollutant into ma-*
6 *rine waters’ means a discharge into deep waters of the*
7 *territorial sea or the waters of the contiguous zone, or*
8 *into saline estuarine waters where there is strong*
9 *tidal movement.*

10 “(3) *DEADLINE.*—*On or before the 90th day after*
11 *the date of submittal of an application for a modi-*
12 *fication under paragraph (1), the Administrator shall*
13 *issue to the applicant a modified permit under sec-*
14 *tion 402 or a written determination that the applica-*
15 *tion does not meet the terms and conditions of this*
16 *subsection.*

17 “(4) *EFFECT OF FAILURE TO RESPOND.*—*If the*
18 *Administrator does not respond to an application for*
19 *a modification under paragraph (1) on or before the*
20 *90th day referred to in paragraph (3), the applica-*
21 *tion shall be deemed approved and the modification*
22 *sought by the applicant shall be in effect for the suc-*
23 *ceeding 10-year period.”.*

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

4 “(6) *EXTENSION OF APPLICATION DEADLINE.*—
5 In the 365-day period beginning on the date of the
6 enactment of this paragraph, municipalities may
7 apply for a modification pursuant to subsection (s) of
8 the requirements of subsection (b)(1)(B) of this sec-
9 tion.”.

10 (c) *MODIFICATIONS FOR SMALL SYSTEM TREATMENT*
11 *TECHNOLOGIES.*—Section 301 (33 U.S.C. 1311) is amended
12 by adding at the end the following:

13 “(t) *MODIFICATIONS FOR SMALL SYSTEM TREATMENT*
14 *TECHNOLOGIES.*—The Administrator, with the concurrence
15 of the State, or a State with an approved program under
16 section 402 may issue a permit under section 402 which
17 modifies the requirements of subsection (b)(1)(B) of this sec-
18 tion with respect to the discharge of any pollutant from a
19 publicly owned treatment works serving a community of
20 20,000 people or fewer if the applicant demonstrates to the
21 satisfaction of the Administrator that—

22 “(1) the effluent from such facility originates
23 primarily from domestic users; and

24 “(2) such facility utilizes a properly constructed
25 and operated alternative treatment system (including

1 *recirculating sand filter systems, constructed wet-*
2 *lands, and oxidation lagoons) which is equivalent to*
3 *secondary treatment or will provide in the receiving*
4 *waters and watershed an adequate level of protection*
5 *to human health and the environment and contribute*
6 *to the attainment of water quality standards.”.*

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

9 “(u) PUERTO RICO.—

10 “(1) STUDY BY GOVERNMENT OF PUERTO
11 *RICO.—Not later than 3 months after the date of the*
12 *enactment of this section, the Government of Puerto*
13 *Rico may, after consultation with the Administrator,*
14 *initiate a study of the marine environment of Anasco*
15 *Bay off the coast of the Mayaguez region of Puerto*
16 *Rico to determine the feasibility of constructing a*
17 *deepwater outfall for the publicly owned treatment*
18 *works located at Mayaguez, Puerto Rico. Such study*
19 *shall recommend one or more technically feasible loca-*
20 *tions for the deepwater outfall based on the effects of*
21 *such outfall on the marine environment.*

22 “(2) APPLICATION FOR MODIFICATION.—Not-
23 *withstanding subsection (j)(1)(A), not later than 18*
24 *months after the date of the enactment of this section,*
25 *an application may be submitted for a modification*

1 *pursuant to subsection (h) of the requirements of sub-*
2 *section (b)(1)(B) of this section by the owner of the*
3 *publicly owned treatment works at Mayaguez, Puerto*
4 *Rico, for a deepwater outfall at a location rec-*
5 *ommended in the study conducted pursuant to para-*
6 *graph (1).*

7 “(3) *INITIAL DETERMINATION.*—*On or before the*
8 *90th day after the date of submittal of an application*
9 *for modification under paragraph (2), the Adminis-*
10 *trator shall issue to the applicant a draft initial de-*
11 *termination regarding the modification of the existing*
12 *permit.*

13 “(4) *FINAL DETERMINATION.*—*On or before the*
14 *270th day after the date of submittal of an applica-*
15 *tion for modification under paragraph (2), the Ad-*
16 *ministrators shall issue a final determination regard-*
17 *ing such modification.*

18 “(5) *EFFECTIVENESS.*—*If a modification is*
19 *granted pursuant to an application submitted under*
20 *this subsection, such modification shall be effective*
21 *only if the new deepwater outfall is operational with-*
22 *in 5 years after the date of the enactment of this sub-*
23 *section. In all other aspects, such modification shall*
24 *be effective for the period applicable to all modifica-*
25 *tions granted under subsection (h).”.*

1 **SEC. 310. TOXIC POLLUTANTS.**

2 (a) *TOXIC EFFLUENT LIMITATIONS AND STAND-*
3 *ARDS.—Section 307(a)(2) (33 U.S.C. 1317(a)(2)) is amend-*
4 *ed—*

5 (1) *by striking “(2) Each” and inserting the fol-*
6 *lowing:*

7 “(2) *TOXIC EFFLUENT LIMITATIONS AND STAND-*
8 *ARDS.—*

9 “(A) *IN GENERAL.—Each*”;

10 (2) *by moving paragraph (2) 2 ems to the right;*

11 (3) *by indenting subparagraph (A), as so des-*
12 *ignated, and moving the remaining text of such sub-*
13 *paragraph 2 ems further to the right; and*

14 (4) *in subparagraph (A), as so designated, by*
15 *striking the third sentence; and*

16 (5) *by adding at the end the following:*

17 “(B) *FACTORS.—The published effluent*
18 *standard (or prohibition) shall take into ac-*
19 *count—*

20 “(i) *the pollutant’s persistence, tox-*
21 *icity, degradability, and bioaccumulation*
22 *potential;*

23 “(ii) *the magnitude and risk of expo-*
24 *sure to the pollutant, including risks to af-*
25 *ected organisms and the importance of such*
26 *organisms;*

1 “(iii) the relative contribution of point
2 source discharges of the pollutant to the
3 overall risk from the pollutant;

4 “(iv) the availability of, costs associ-
5 ated with, and risk posed by substitute
6 chemicals or processes or the availability of
7 treatment processes or control technology;

8 “(v) the beneficial and adverse social
9 and economic effects of the effluent stand-
10 ard, including the impact on energy re-
11 sources;

12 “(vi) the extent to which effective con-
13 trol is being or may be achieved in an expe-
14 ditious manner under other regulatory au-
15 thorities;

16 “(vii) the impact on national security
17 interests; and

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

20 (b) BEACH WATER QUALITY MONITORING.—

21 (1) IN GENERAL.—Section 304 is further amend-
22 ed by adding at the end the following:

23 “(o) BEACH WATER QUALITY MONITORING.—After
24 consultation with appropriate Federal, State, and local
25 agencies and after providing notice and opportunity for

1 *public comment, the Administrator shall develop and issue,*
2 *not later than 18 months after the date of the enactment*
3 *of this Act, guidance that States may use in monitoring*
4 *water quality at beaches and issuing health advisories with*
5 *respect to beaches, including testing protocols, recommenda-*
6 *tions on frequency of testing and monitoring, recommenda-*
7 *tions on pollutants for which monitoring and testing should*
8 *be conducted, and recommendations on when health*
9 *advisories should be issued. Such guidance shall be based*
10 *on the best available scientific information and be sufficient*
11 *to protect public health and safety in the case of any reason-*
12 *ably expected exposure to pollutants as a result of swim-*
13 *ming or bathing.”.*

14 (2) *REPORTS.—Section 516(a) (33 U.S.C.*
15 *1375(a)) is amended by striking “and (9)” and in-*
16 *serting “(9) the monitoring conducted by States on*
17 *the water quality of beaches and the issuance of health*
18 *advisories with respect to beaches, and (10)”.*

19 (c) *FISH CONSUMPTION ADVISORIES.—Any fish con-*
20 *sumption advisories issued by the Administrator shall be*
21 *based upon the protocols, methodology, and findings of the*
22 *Food and Drug Administration.*

23 **SEC. 311. LOCAL PRETREATMENT AUTHORITY.**

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

1 “(f) LOCAL PRETREATMENT AUTHORITY.—

2 “(1) DEMONSTRATION.—If, to carry out the pur-
3 poses identified in paragraph (2), a publicly owned
4 treatment works with an approved pretreatment pro-
5 gram demonstrates to the satisfaction of the Adminis-
6 trator, or a State with an approved program under
7 section 402, that—

8 “(A) such publicly owned treatment works
9 is in compliance, and is likely to remain in com-
10 pliance, with its permit under section 402, in-
11 cluding applicable effluent limitations and nar-
12 rative standards;

13 “(B) such publicly owned treatment works
14 is in compliance, and is likely to remain in com-
15 pliance, with applicable air emission limita-
16 tions;

17 “(C) biosolids produced by such publicly
18 owned treatment works meet beneficial use re-
19 quirements under section 405; and

20 “(D) such publicly owned treatment works
21 is likely to continue to meet all applicable State
22 requirements;

23 the approved pretreatment program shall be modified
24 to allow the publicly owned treatment works to apply

1 *local limits in lieu of categorical pretreatment stand-*
2 *ards promulgated under this section.*

3 “(2) *PURPOSES.*—*The publicly owned treatment*
4 *works may make the demonstration to the Adminis-*
5 *trator or the State, as the case may be, to apply local*
6 *limits in lieu of categorical pretreatment standards,*
7 *as the treatment works deems necessary, for the pur-*
8 *poses of—*

9 “(A) *reducing the administrative burden as-*
10 *sociated with the designation of an ‘industrial*
11 *user’ as a ‘categorical industrial user’; or*

12 “(B) *eliminating additional redundant or*
13 *unnecessary treatment by industrial users which*
14 *has little or no environmental benefit.*

15 “(3) *LIMITATIONS.*—

16 “(A) *SIGNIFICANT NONCOMPLIANCE.*—*The*
17 *publicly owned treatment works may not apply*
18 *local limits in lieu of categorical pretreatment*
19 *standards to any industrial user which is in sig-*
20 *nificant noncompliance (as defined by the Ad-*
21 *ministrator) with its approved pretreatment pro-*
22 *gram.*

23 “(B) *PROCEDURES.*—*A demonstration to*
24 *the Administrator or the State under paragraph*
25 *(1) must be made under the procedures for*

1 *pretreatment program modification provided*
2 *under this section and section 402.*

3 *“(4) ANNUAL REVIEW.—*

4 *“(A) DEMONSTRATION RELATING TO ABIL-*
5 *ITY TO MEET CRITERIA.—As part of the annual*
6 *pretreatment report of the publicly owned treat-*
7 *ment works to the Administrator or State, the*
8 *treatment works shall demonstrate that applica-*
9 *tion of local limits in lieu of categorical*
10 *pretreatment standards has not resulted in the*
11 *inability of the treatment works to meet the cri-*
12 *teria of paragraph (1).*

13 *“(B) TERMINATION OF AUTHORITY.—If the*
14 *Administrator or State determines that applica-*
15 *tion of local limits in lieu of categorical*
16 *pretreatment standards has resulted in the in-*
17 *ability of the treatment works to meet the cri-*
18 *teria of paragraph (1), the authority of a pub-*
19 *licly owned treatment works under this section*
20 *shall be terminated and any affected industrial*
21 *user shall have a reasonable period of time to be*
22 *determined by the Administrator or State, but*
23 *not to exceed 2 years, to come into compliance*
24 *with any otherwise applicable requirements of*
25 *this Act.”.*

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

2 *Section 307 (33 U.S.C. 1317) is amended by adding*
3 *at the end the following:*

4 *“(g) COMPLIANCE WITH MANAGEMENT PRACTICES.—*

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

17 *“(A) if the treatment works has accepted the*
18 *code of management practices;*

19 *“(B) if the code of management practices*
20 *meets the requirements of paragraph (2); and*

21 *“(C) if the facility is—*

22 *“(i) part of a class of facilities for*
23 *which the code of management practices has*
24 *been approved by the Administrator or the*
25 *State;*

1 “(ii) in compliance with a mass limi-
2 tation or concentration level for silver at-
3 tainable with the application of the best
4 available technology economically achievable
5 for such facilities, as established by the Ad-
6 ministrator after a review of the treatment
7 and management practices of such class of
8 facilities; and

9 “(iii) implementing the code of man-
10 agement practices.

11 “(2) CODE OF MANAGEMENT PRACTICES.—A code
12 of management practices meets the requirements of
13 this paragraph if the code of management practices—

14 “(A) is developed and adopted by represent-
15 atives of industry and publicly owned treatment
16 works of major urban areas;

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

19 “(C) reflects acceptable industry practices to
20 minimize the amount of silver introduced into
21 publicly owned treatment works or otherwise en-
22 tering the environment from the class of facilities
23 for which the code of management practices is
24 approved; and

25 “(D) addresses, at a minimum—

1 “(i) the use of the best available tech-
2 nology economically achievable, based on a
3 review of the current state of such tech-
4 nology for such class of facilities and of the
5 effluent guidelines for such facilities;

6 “(ii) water conservation measures
7 available to reduce the total quantity of dis-
8 charge from such facilities to publicly
9 owned treatment works;

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

14 “(iv) operating and maintenance prac-
15 tices to minimize the amount of silver intro-
16 duced into publicly owned treatment works
17 and to assure consistent performance of the
18 management practices and treatment tech-
19 nology specified under this paragraph.

20 “(3) INTERIM EXTENSION FOR POTWS RECEIVING
21 SILVER.—In any case in which the Administrator or
22 a State with a permit program approved under sec-
23 tion 402 allows under paragraph (1) a person to com-
24 ply with a code of management practices for a period
25 of not to exceed 5 years in lieu of complying with a

1 *pretreatment requirement (including a local limit) for*
2 *silver, the Administrator or State, as applicable, shall*
3 *modify the permit conditions and effluent limitations*
4 *for any affected publicly owned treatment works to*
5 *defer for such period compliance with any effluent*
6 *limitation derived from a water quality standard for*
7 *silver beyond that required by section 301(b)(2), not-*
8 *withstanding the provisions of section 303(d)(4) and*
9 *402(o), if the Administrator or the State, as applica-*
10 *ble, finds that—*

11 *“(A) the quality of any affected waters and*
12 *the operation of the treatment works will be ade-*
13 *quately protected during such period by imple-*
14 *mentation of the code of management practices*
15 *and the use of best technology economically*
16 *achievable by persons introducing silver into the*
17 *treatment works;*

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

21 *“(C) a program of enforcement by such*
22 *treatment works and the State ensures such com-*
23 *pliance.”.*

1 **SEC. 313. FEDERAL ENFORCEMENT.**

2 (a) *ADJUSTMENT OF PENALTIES.*—Section 309 (33
3 *U.S.C. 1319*) is amended by adding at the end the following:

4 “(h) *ADJUSTMENT OF MONETARY PENALTIES FOR IN-*
5 *FLATION.*—

6 “(1) *IN GENERAL.*—Not later than 4 years after
7 the date of the enactment of this subsection, and at
8 least once every 4 years thereafter, the Administrator
9 shall adjust each monetary penalty provided by this
10 section in accordance with paragraph (2) and publish
11 such adjustment in the Federal Register.

12 “(2) *METHOD.*—An adjustment to be made pur-
13 suant to paragraph (1) shall be determined by in-
14 creasing or decreasing the maximum monetary pen-
15 alty or the range of maximum monetary penalties, as
16 appropriate, by multiplying the cost-of-living adjust-
17 ment and the amount of such penalty.

18 “(3) *COST-OF-LIVING ADJUSTMENT DEFINED.*—
19 In this subsection, the term ‘cost-of-living’ adjustment
20 means the percentage (if any) for each monetary pen-
21 alty by which—

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

25 “(B) the Consumer Price Index for—

1 “(i) with respect to the first adjustment
2 under this subsection, the month of June of
3 the calendar year preceding the date of the
4 enactment of this subsection; and

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

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

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

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

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

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

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

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

11 (b) *REGULATIONS.*—The President shall issue regula-
12 tions clarifying the meaning of the term “de minimis quan-
13 tity of oil or hazardous substances” as used in this section.

14 **SEC. 315. MARINE SANITATION DEVICES.**

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

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

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

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

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

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

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

13 “(B) *engaged in any activity resulting, or*
14 *which may result, in the discharge or runoff of*
15 *pollutants,*

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

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

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

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

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

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

20 “(4) *SOVEREIGN IMMUNITY.*—

21 “(A) *WAIVER.*—The United States hereby
22 expressly waives any immunity otherwise appli-
23 cable to the United States with respect to any re-
24 quirement, administrative authority, and process
25 and sanctions referred to in paragraph (1) (in-

1 cluding any injunctive relief, any administrative
2 order, any civil or administrative penalty or
3 fine referred to in paragraph (3), or any reason-
4 able service charge).

5 “(B) *PROCESSING FEES.*—The reasonable
6 service charges referred to in this paragraph in-
7 clude fees or charges assessed in connection with
8 the processing and issuance of permits, renewal
9 of permits, amendments to permits, review of
10 plans, studies, and other documents, and inspec-
11 tion and monitoring of facilities, as well as any
12 other nondiscriminatory charges that are as-
13 sessed in connection with a Federal, State, inter-
14 state, or local water pollution regulatory pro-
15 gram.

16 “(5) *EXEMPTIONS.*—

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

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

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

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

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

1 *tional Guard of any State and which are*
2 *uniquely military in nature. The President shall*
3 *reconsider the need for such regulations at 3-year*
4 *intervals.*

5 “(E) *REPORTS.*—*The President shall report*
6 *each January to the Congress all exemptions*
7 *from the requirements of this section granted*
8 *during the preceding calendar year, together*
9 *with the President’s reason for granting such ex-*
10 *emption.*

11 “(6) *VENUE.*—*Nothing in this section shall be*
12 *construed to prevent any department, agency, or in-*
13 *strumentality of the Federal Government, or any offi-*
14 *cer, agent, or employee thereof in the performance of*
15 *official duties, from removing to the appropriate Fed-*
16 *eral district court any proceeding to which the de-*
17 *partment, agency, or instrumentality or officer, agent,*
18 *or employee thereof is subject pursuant to this section,*
19 *and any such proceeding may be removed in accord-*
20 *ance with chapter 89 of title 28, United States Code.*

21 “(7) *PERSONAL LIABILITY OF FEDERAL EMPLOY-*
22 *EES.*—*No agent, employee, or officer of the United*
23 *States shall be personally liable for any civil penalty*
24 *under any Federal, State, interstate, or local water*
25 *pollution law with respect to any act or omission*

1 *within the scope of the official duties of the agent, em-*
2 *ployee, or officer.*

3 “(8) *CRIMINAL SANCTIONS.*—An agent, employee,
4 *or officer of the United States shall be subject to any*
5 *criminal sanction (including any fine or imprison-*
6 *ment) under any Federal or State water pollution*
7 *law, but no department, agency, or instrumentality of*
8 *the executive, legislative, or judicial branch of the*
9 *Federal Government shall be subject to any such sanc-*
10 *tion.”.*

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

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

24 *(c) ENFORCEMENT.*—Section 313 is further amended
25 *by adding at the end the following:*

1 “(d) *FEDERAL FACILITY ENFORCEMENT.*—

2 “(1) *ADMINISTRATIVE ENFORCEMENT BY EPA.*—

3 *The Administrator may commence an administrative*
4 *enforcement action against any department, agency,*
5 *or instrumentality of the executive, legislative, or ju-*
6 *dicial branch of the Federal Government pursuant to*
7 *the enforcement authorities contained in this Act.*

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

17 “(3) *VOLUNTARY SETTLEMENT.*—*Any voluntary*
18 *resolution or settlement of an action under this sub-*
19 *section shall be set forth in an administrative consent*
20 *order.*

21 “(4) *CONFERRAL WITH EPA.*—*No administrative*
22 *order issued to a department, agency, or instrumen-*
23 *tality under this section shall become final until such*
24 *department, agency, or instrumentality has had the*
25 *opportunity to confer with the Administrator.”.*

1 (d) *LIMITATION ON ACTIONS AND RIGHT OF INTER-*
2 *VENTION.*—Section 313 is further amended by adding at
3 *the end the following:*

4 “(e) *LIMITATION ON ACTIONS AND RIGHT OF INTER-*
5 *VENTION.*—Any violation with respect to which the Admin-
6 *istrator has commenced and is diligently prosecuting an ac-*
7 *tion under this subsection, or for which the Administrator*
8 *has issued a final order and the violator has either paid*
9 *a penalty or fine assessed under this subsection or is subject*
10 *to an enforceable schedule of corrective actions, shall not*
11 *be the subject of an action under section 505 of this Act.*
12 *In any action under this subsection, any citizen may inter-*
13 *vene as a matter of right.”.*

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

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

21 “(24) *The term ‘radioactive materials’ includes source*
22 *materials, special nuclear materials, and byproduct mate-*
23 *rials (as such terms are defined under the Atomic Energy*
24 *Act of 1954) which are used, produced, or managed at fa-*
25 *cilities not licensed by the Nuclear Regulatory Commission;*

1 *except that such term does not include any material which*
2 *is discharged from a vessel covered by Executive Order*
3 *12344 (42 U.S.C. 7158 note; relating to the Naval Nuclear*
4 *Propulsion Program).”.*

5 (g) *CONFORMING AMENDMENTS.—Section 313(b) (33*
6 *U.S.C. 1323(b)) is amended—*

7 (1) *by striking “(b)(1)” and inserting the follow-*
8 *ing:*

9 “(b) *WASTEWATER FACILITIES.—*

10 “(1) *COOPERATION FOR USE OF WASTEWATER*
11 *CONTROL SYSTEMS.—”;*

12 (2) *in paragraph (2) by inserting “LIMITATION*
13 *ON CONSTRUCTION.—” before “Construction”; and*

14 (3) *by moving paragraphs (1) and (2) 2 ems to*
15 *the right.*

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

20 **SEC. 317. CLEAN LAKES.**

21 (a) *PRIORITY LAKES.—Section 314(d)(2) (33 U.S.C.*
22 *1324(d)(2)) is amended by inserting “Paris Twin Lakes,*
23 *Illinois; Otsego Lake, New York; Raystown Lake, Penn-*
24 *sylvania;” after “Minnesota;”.*

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

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

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

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

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

10 “*STANDARD FOR COOLING WATER INTAKE STRUC-*
11 *TURES.*—”;

12 (2) by inserting before “Any” the following: “(1)
13 *IN GENERAL.*—”;

14 (3) by indenting paragraph (1), as designated by
15 paragraph (2) of this section, and moving such para-
16 graph 2 ems to the right; and

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

18 “(2) *NEW POINT SOURCE CONSIDERATIONS.*—In
19 establishing a standard referred to in paragraph (1)
20 for cooling water intake structures located at new
21 point sources, the Administrator shall consider, at a
22 minimum, the following:

23 “(A) The relative technological, engineering,
24 and economic feasibility of possible technologies

1 *or techniques for minimizing any such adverse*
2 *environmental impacts.*

3 “(B) *The relative technological, engineering,*
4 *and economic feasibility of possible site locations,*
5 *intake structure designs, and cooling water flow*
6 *techniques.*

7 “(C) *The relative environmental, social, and*
8 *economic costs and benefits of possible tech-*
9 *nologies, techniques, site locations, intake struc-*
10 *ture designs, and cooling water flow techniques.*

11 “(D) *The projected useful life of the new*
12 *point source.*

13 “(3) *EXISTING POINT SOURCES.—For existing*
14 *point sources, the Administrator may require the use*
15 *of best technology available in the case of existing*
16 *cooling water intake structures if the Administrator*
17 *determines such structures are having or could have*
18 *a significant adverse impact on the aquatic environ-*
19 *ment. In establishing a standard referred to in para-*
20 *graph (1) for such existing point sources, the Admin-*
21 *istrator shall consider, at a minimum, the following:*

22 “(A) *The relative technological, engineering,*
23 *and economic feasibility of reasonably available*
24 *retrofit technologies or techniques for minimizing*
25 *any such adverse environmental impacts.*

1 “(B) Other mitigation measures for offset-
2 ting the anticipated adverse environmental im-
3 pacts resulting from the withdrawal of cooling
4 water.

5 “(C) Relative environmental, social, and
6 economic costs and benefits of possible retrofit
7 technologies, techniques, and mitigation meas-
8 ures.

9 “(D) The projected remaining useful life of
10 the existing point source.

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

13 “(A) NEW POINT SOURCE.—The term ‘new
14 point source’ means any point source the con-
15 struction of which will commence after the publi-
16 cation of proposed regulations prescribing a
17 standard for intake structures that will be appli-
18 cable to such source if such standard is promul-
19 gated in accordance with paragraph (2).

20 “(B) EXISTING POINT SOURCE.—The term
21 ‘existing point source’ means any point source
22 that is not a new point source.”.

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

24 (a) STATE ASSESSMENT REPORT.—

1 (1) *CONTENTS.*—Section 319(a)(1)(C) (33 U.S.C.
2 1329(a)(1)(C)) is amended by striking “best manage-
3 ment practices and”.

4 (2) *INFORMATION USED IN PREPARATION.*—Sec-
5 tion 319(a)(2) is amended—

6 (A) by inserting “, reviewing, and revising”
7 after “developing”; and

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

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

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

18 (b) *STATE MANAGEMENT PROGRAM.*—

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

21 (2) *CONTENTS.*—Section 319(b)(2) is amended—

22 (A) in subparagraph (A)—

23 (i) by striking “best”;

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

1 (iii) by inserting “and measure” after
2 “practice”;

3 (B) in subparagraph (B)—

4 (i) by striking “nonregulatory or regu-
5 latory programs for enforcement,” and in-
6 serting “one or more of the following: vol-
7 untary programs, incentive-based programs,
8 regulatory programs, enforceable policies
9 and mechanisms, State management pro-
10 grams approved under section 306 of the
11 Coastal Zone Management Act of 1972,”;
12 and

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

23 (C) by striking subparagraph (C) and in-
24 serting the following:

1 “(C) A schedule containing interim goals
2 and milestones for making reasonable progress
3 toward the attainment of standards, which may
4 be demonstrated by one or any combination of
5 the following: improvements in water quality
6 (including biological indicators), documented
7 implementation of voluntary nonpoint source
8 control practices and measures, and adoption of
9 enforceable policies and mechanisms.”;

10 (D) in subparagraph (D) by striking “A
11 certification of” and inserting “After the date of
12 the enactment of the Clean Water Amendments of
13 1995, a certification by”; and

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

15 “(G) A description of the monitoring or
16 other assessment which will be carried out under
17 the program for the purposes of monitoring and
18 assessing the effectiveness of the program, includ-
19 ing the attainment of interim goals and mile-
20 stones.

21 “(H) An identification of activities on Fed-
22 eral lands in the State that are inconsistent with
23 the State management program.

24 “(I) An identification of goals and mile-
25 stones for progress in attaining water quality

1 standards, including a projected date for attain-
2 ing such standards as expeditiously as prac-
3 ticable but not later than 15 years after the date
4 of approval of the State program for each of the
5 waters listed pursuant to subsection (a).”.

6 (3) *UTILIZATION OF LOCAL AND PRIVATE EX-*
7 *PERTS.*—Section 319(b)(3) is amended by inserting
8 before the period at the end the following: “, including
9 academic institutions, private industry experts, and
10 other individual experts in water resource conserva-
11 tion and planning”.

12 (4) *NEW TECHNOLOGIES; USE OF RESOURCES;*
13 *AGRICULTURAL PROGRAMS.*—Section 319(b) is
14 amended by adding at the end the following:

15 “(5) *RECOGNITION OF NEW TECHNOLOGIES.*—In
16 developing and implementing a management program
17 under this subsection, a State may recognize and uti-
18 lize new practices, technologies, processes, products,
19 and other alternatives.

20 “(6) *EFFICIENT AND EFFECTIVE USE OF RE-*
21 *SOURCES.*—In developing and implementing a man-
22 agement program under this subsection, a State may
23 recognize and provide for a methodology which takes
24 into account situations in which management meas-
25 ures used to control one pollutant have an adverse im-

1 *pact with respect to another pollutant. The methodol-*
2 *ogy should encourage the balanced combination of*
3 *measures which best address the various impairments*
4 *on the watershed or site.*

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

12 *“(A) if such plan has been developed under*
13 *a program subject to a memorandum of agree-*
14 *ment between the Chief of the Natural Resources*
15 *Conservation Service and the Governor, or their*
16 *respective designees; and*

17 *“(B) if such memorandum of agreement*
18 *specifies—*

19 *“(i) the scope and content of the Natu-*
20 *ral Resources Conservation Service program*
21 *(not an individual farm or ranch plan) in*
22 *the State or regions of the State;*

23 *“(ii) the terms of approval, implemen-*
24 *tation, and duration of a voluntary farm or*
25 *ranch plan for agricultural producers;*

1 “(iii) the responsibilities for assessing
2 implementation of voluntary whole farm
3 and ranch natural resource management
4 plans; and

5 “(iv) the duration of such memoran-
6 dum of agreement.

7 *At a minimum, such memorandum of agreement shall*
8 *be reviewed and may be revised every 5 years, as part*
9 *of the State review of its management program under*
10 *this section.”.*

11 (c) *SUBMISSION OF MANAGEMENT PROGRAMS.—Para-*
12 *graph (2) of section 319(c) is amended to read as follows:*

13 “(2) *TIME PERIOD FOR SUBMISSION OF MANAGE-*
14 *MENT PROGRAMS.—Each management program shall*
15 *be submitted to the Administrator within 30 months*
16 *of the issuance by the Administrator of the final guid-*
17 *ance under subsection (o) and every 5 years there-*
18 *after. Each program submission after the initial sub-*
19 *mission following the date of the enactment of the*
20 *Clean Water Amendments of 1995 shall include a*
21 *demonstration of reasonable further progress toward*
22 *the goal of attaining water quality standards within*
23 *15 years of approval of the State program, including*
24 *documentation of the degree to which the State has*
25 *achieved the interim goals and milestones contained*

1 *in the previous program submission. Such demonstra-*
2 *tion shall take into account the adequacy of Federal*
3 *funding under this section.”.*

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

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

8 (2) *DISAPPROVAL.—Section 319(d)(2) is amend-*
9 *ed—*

10 (A) *in subparagraph (B) by inserting before*
11 *the semicolon the following: “; except that such*
12 *program or portion shall not be disapproved*
13 *solely because the program or portion does not*
14 *include enforceable policies or mechanisms”;*

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

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

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

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

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

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

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

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

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

17 “(4) *FAILURE OF STATE TO SUBMIT PROGRAM.*—

18 “(A) *PROGRAM MANAGEMENT BY THE AD-*
19 *MINISTRATOR.*—If a State fails to submit a man-
20 agement program or revised management pro-
21 gram under subsection (b) or the Administrator
22 disapproves such management program, the Ad-
23 ministrator shall prepare and implement a man-
24 agement program for controlling pollution added
25 from nonpoint sources to the navigable waters

1 *within the State and improving the quality of*
2 *such waters in accordance with subsection (b).*

3 “(B) *NOTICE AND HEARING.*—*If the Admin-*
4 *istrator intends to disapprove a program submit-*
5 *ted by a State, the Administrator shall first no-*
6 *tify the Governor of the State in writing of the*
7 *modifications necessary to meet the requirements*
8 *of this section. The Administrator shall provide*
9 *adequate public notice and an opportunity for a*
10 *public hearing for all interested parties.*

11 “(C) *STATE REVISION OF ITS PROGRAM.*—
12 *If, after taking into account the level of funding*
13 *actually provided as compared with the level au-*
14 *thorized under subsection (j), the Administrator*
15 *determines that a State has failed to demonstrate*
16 *reasonable further progress toward the attain-*
17 *ment of water quality standards as required, the*
18 *State shall revise its program within 12 months*
19 *of that determination in a manner sufficient to*
20 *achieve attainment of applicable water quality*
21 *standards by the deadline established by this Act.*
22 *If a State fails to make such a program revision*
23 *or the Administrator disapproves such a revi-*
24 *sion, the Administrator shall prepare and imple-*

1 *ment a nonpoint source management program*
2 *for the State.”.*

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

6 (f) *GRANT PROGRAM.*—

7 (1) *IN GENERAL.*—Section 319(h)(1) is amend-
8 *ed—*

9 (A) *by amending the paragraph heading to*
10 *read as follows: “GRANTS FOR PREPARATION AND*
11 *IMPLEMENTATION OF REPORTS AND MANAGE-*
12 *MENT PROGRAMS.—”;*

13 (B) *by striking “for which a report submit-*
14 *ted under subsection (a) and a management pro-*
15 *gram submitted under subsection (b) is approved*
16 *under this section”;*

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

20 (D) *by striking “under this subsection to*
21 *such State” and inserting “to such State”;*

22 (E) *by striking “implementing such man-*
23 *agement program” and inserting “preparing a*
24 *report under subsection (a) and in preparing*

1 *and implementing a management program*
2 *under subsection (b)”;*

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

8 *(G) by adding at the end the following:*
9 *“The Administrator is authorized to provide*
10 *funds to a State if necessary to implement an*
11 *approved portion of a State program or, with*
12 *the approval of the Governor of the State, to im-*
13 *plement a component of a federally established*
14 *program. The Administrator may continue to*
15 *make grants to any State with an program ap-*
16 *proved on the day before the date of the enact-*
17 *ment of the Clean Water Amendments of 1995*
18 *until the Administrator withdraws the approval*
19 *of such program or the State fails to submit a*
20 *revision of such program in accordance with sub-*
21 *section (c)(2).”.*

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

24 *(A) by striking “management program im-*
25 *plemented” and inserting “report prepared and*

1 *management program prepared and imple-*
2 *mented”;*

3 *(B) by striking “60 percent” and inserting*
4 *“75 percent”;*

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

9 *(D) by inserting “of program implementa-*
10 *tion” after “non-Federal share”.*

11 (3) *LIMITATION ON GRANT AMOUNTS.—Section*
12 *319(h)(4) is amended—*

13 *(A) by inserting before the first sentence the*
14 *following: “The Administrator shall establish,*
15 *after consulting with the States, maximum and*
16 *minimum grants for any fiscal year to promote*
17 *equity between States and effective nonpoint*
18 *source management.”;* and

19 *(B) by adding at the end the following:*
20 *“The minimum percentage of funds allocated to*
21 *each State shall be 0.5 percent of the amount ap-*
22 *propriated.”.*

23 (4) *ALLOCATION OF GRANT FUNDS.—Paragraph*
24 (5) *of section 319(h) is amended to read as follows:*

1 “(5) *ALLOCATION OF GRANT FUNDS.*—Grants
2 under this section shall be allocated to States with ap-
3 proved programs in a fair and equitable manner and
4 be based upon rules and regulations promulgated by
5 the Administrator which shall take into account the
6 extent and nature of the nonpoint sources of pollution
7 in each State and other relevant factors.”.

8 (5) *USE OF FUNDS.*—Paragraph (7) of section
9 319(h) is amended to read as follows:

10 “(7) *USE OF FUNDS.*—A State may use grants
11 made available to the State pursuant to this section
12 for activities relating to nonpoint source water pollu-
13 tion control, including—

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

17 “(B) assistance related to the cost of prepar-
18 ing or implementing the State management pro-
19 gram;

20 “(C) providing incentive grants to individ-
21 uals to implement a site-specific water quality
22 plan in amounts not to exceed 75 percent of the
23 cost of the project from all Federal sources;

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

4 “(E) restoring and maintaining the chemi-
5 cal, physical, and biological integrity of urban
6 and rural waters and watersheds (including res-
7 toration and maintenance of water quality, a
8 balanced indigenous population of shellfish, fish,
9 and wildlife, aquatic and riparian vegetation,
10 and recreational activities in and on the water)
11 and protecting designated uses, including fish-
12 ing, swimming, and drinking water supply.”.

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

16 “(8) COMPLIANCE WITH STATE MANAGEMENT
17 PROGRAM.—In any fiscal year for which the Admin-
18 istrator determines that a State has not made satis-
19 factory progress in the preceding fiscal year in meet-
20 ing the schedule specified for such State under sub-
21 section (b)(2)(C), the Administrator is authorized to
22 withhold grants pursuant to this section in whole or
23 in part to the State after adequate written notice is
24 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 needs and
8 costs of nonpoint source control measures for dif-
9 ferent nonpoint source categories and
10 subcategories and of options for better reflecting
11 such needs and costs in the allotment of funds.

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

18 (g) *GRANTS FOR PROTECTING GROUND WATER QUAL-*
19 *ITY.*—Section 319(i)(3) is amended by striking “\$150,000”
20 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 fiscal years 1992

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

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

7 (i) *CONSISTENCY OF OTHER PROGRAMS AND*
8 *PROJECTS WITH MANAGEMENT PROGRAMS.*—Section
9 319(k) (33 U.S.C. 1329(k)) is amended—

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

12 (2) by inserting before the period at the end the
13 following: “and the State watershed management pro-
14 gram”; and

15 (3) by adding at the end the following: “Federal
16 agencies that own or manage land, or issue licenses
17 for activities that cause nonpoint source pollution
18 from such land, shall coordinate their nonpoint source
19 control measures with the State nonpoint source man-
20 agement program and the State watershed manage-
21 ment program. A Federal agency and the Governor of
22 an affected State shall enter into a memorandum of
23 understanding to carry out the purposes of this para-
24 graph. Such a memorandum of understanding shall

1 *not relieve the Federal agency of the agency's obliga-*
2 *tion to comply with its own mandates."*

3 *(j) REPORTS OF THE ADMINISTRATOR.—*

4 *(1) BIENNIAL REPORTS.—Section 319(m)(1) is*
5 *amended—*

6 *(A) in the paragraph heading by striking*
7 *"ANNUAL" and inserting "BIENNIAL"; and*

8 *(B) by striking "1988, and each January*
9 *1" and inserting "1995, and biennially".*

10 *(2) CONTENTS.—Section 319(m)(2) is amend-*
11 *ed—*

12 *(A) by striking the paragraph heading and*
13 *all that follows before "at a minimum" and in-*
14 *serting "CONTENTS.—Each report submitted*
15 *under paragraph (1),";*

16 *(B) in subparagraph (A) by striking "best*
17 *management practices" and inserting "meas-*
18 *ures"; and*

19 *(C) in subparagraph (B) by striking "best*
20 *management practices" and inserting "the meas-*
21 *ures provided by States under subsection (b)".*

22 *(k) SET ASIDE FOR ADMINISTRATIVE PERSONNEL.—*

23 *Section 319(n) is amended by striking "less" and inserting*
24 *"more".*

1 *(l) GUIDANCE ON MODEL MANAGEMENT PRACTICES*
2 *AND MEASURES.—Section 319 is further amended by add-*
3 *ing at the end the following:*

4 *“(o) GUIDANCE ON MODEL MANAGEMENT PRACTICES*
5 *AND MEASURES.—*

6 *“(1) IN GENERAL.—The Administrator shall*
7 *publish guidance to identify model management prac-*
8 *tices and measures which may be undertaken, at the*
9 *discretion of the State or appropriate entity, under a*
10 *management program established pursuant to this*
11 *section.*

12 *“(2) CONSULTATION; PUBLIC NOTICE AND COM-*
13 *MENT.—The Administrator shall develop the model*
14 *management practices and measures under para-*
15 *graph (1) in consultation with the National Oceanic*
16 *and Atmospheric Administration, other appropriate*
17 *Federal and State departments and agencies, and*
18 *academic institutions, private industry experts, and*
19 *other individual experts in water conservation and*
20 *planning, and after providing notice and opportunity*
21 *for public comment.*

22 *“(3) PUBLICATION.—The Administrator shall*
23 *publish proposed guidance under this subsection not*
24 *later than 6 months after the date of the enactment*
25 *of this subsection and shall publish final guidance*

1 *under this subsection not later than 18 months after*
2 *such date of enactment. The Administrator shall peri-*
3 *odically review and revise the final guidance at least*
4 *once every 3 years after its publication.*

5 *“(4) MODEL MANAGEMENT PRACTICES AND*
6 *MEASURES DEFINED.—For the purposes of this sub-*
7 *section, the term ‘model management practices and*
8 *measures’ means economically achievable measures for*
9 *the control of the addition of pollutants from*
10 *nonpoint sources of pollution which reflect the greatest*
11 *degree of pollutant reduction achievable through the*
12 *application of the best available nonpoint pollution*
13 *control practices, technologies, processes, siting cri-*
14 *teria, operating methods, or other alternatives. The*
15 *Administrator may distinguish among classes, types,*
16 *and sizes within any category of nonpoint sources.”.*

17 *(m) INADEQUATE FUNDING.—Section 319 is further*
18 *amended by adding at the end the following:*

19 *“(p) INADEQUATE FUNDING.—For each fiscal year be-*
20 *ginning after the date of the enactment of this subsection*
21 *for which the total of amounts appropriated to carry out*
22 *this section are less than the total of amounts authorized*
23 *to be appropriated pursuant to subsection (j), the deadline*
24 *for compliance with any requirement of this section, includ-*
25 *ing any deadline relating to assessment reports or State*

1 *program implementation or monitoring efforts, shall be*
2 *postponed by 1 year, unless the Administrator and the State*
3 *jointly certify that the amounts appropriated are sufficient*
4 *to meet the requirements of this section.”.*

5 (n) *COASTAL NONPOINT POLLUTION CONTROL PRO-*
6 *GRAMS.—*

7 (1) *REPEAL.—Section 6217 of the Omnibus*
8 *Budget Reconciliation Act of 1990 (16 U.S.C. 1455b)*
9 *is repealed.*

10 (2) *INCLUSION OF COASTAL MANAGEMENT PROVI-*
11 *SIONS IN NONPOINT PROGRAM.—Section 319 is*
12 *amended—*

13 (A) *in subsection (a)(1)—*

14 (i) *by striking “and” at the end of sub-*
15 *paragraph (C);*

16 (ii) *by striking the period at the end of*
17 *subparagraph (D) and inserting “(includ-*
18 *ing State management programs approved*
19 *under section 306 of the Coastal Zone Man-*
20 *agement Act of 1972); and”;* and

21 (iii) *by adding at the end the follow-*
22 *ing:*

23 “(E) *identifies critical areas, giving consid-*
24 *eration to the variety of natural, commercial,*
25 *recreational, ecological, industrial, and aesthetic*

1 *resources of immediate and potential value to the*
2 *present and future of the Nation's waters in the*
3 *Coastal Zone.*";

4 *(B) in subsection (a)(2) by inserting "any*
5 *management program of the State approved*
6 *under section 306 of the Coastal Zone Manage-*
7 *ment Act of 1972," after "314,";*

8 *(C) in subsection (b)(2) by adding after sub-*
9 *paragraph (I), as added by subsection (b) of this*
10 *section, the following:*

11 *"(J) For coastal areas, the identification of,*
12 *and continuing process for identifying, land uses*
13 *which individually or cumulatively may cause*
14 *or contribute significantly to degradation of—*

15 *"(i) those coastal waters where there is*
16 *a failure to attain or maintain applicable*
17 *water quality standards or protected des-*
18 *ignated uses, as determined by the State*
19 *pursuant to the State's water quality plan-*
20 *ning processes or watershed planning ef-*
21 *forts; and*

22 *"(ii) those coastal waters that are*
23 *threatened by reasonably foreseeable in-*
24 *creases in pollution loadings.";* and

1 (D) in subsection (c)(1) by inserting “or
2 coastal zone management agencies” after “plan-
3 ning agencies”.

4 (o) *AGRICULTURAL INPUTS.*—Section 319 is further
5 amended by adding at the end the following:

6 “(q) *AGRICULTURAL INPUTS.*—For the purposes of this
7 Act, any land application of livestock manure shall not be
8 considered a point source and shall be subject to enforce-
9 ment only under this section.”.

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

12 “(r) *PURPOSE.*—The purpose of this section is to assist
13 States in addressing nonpoint sources of pollution where
14 necessary to achieve the goals and requirements of this Act.
15 It is recognized that State nonpoint source programs need
16 to be built upon a foundation that voluntary initiatives
17 represent the approach most likely to succeed in achieving
18 the objectives of this Act.”.

19 **SEC. 320. NATIONAL ESTUARY PROGRAM.**

20 (a) *TECHNICAL AMENDMENT.*—Section 320(a)(2)(B)
21 (33 U.S.C. 1330(a)(2)(B)) is amended to read as follows:

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

1 *Island; Buzzards Bay, Massachusetts; Massachu-*
2 *setts Bay, Massachusetts (including Cape Cod*
3 *Bay and Boston Harbor); Puget Sound, Wash-*
4 *ington; New York-New Jersey Harbor, New York*
5 *and New Jersey; Delaware Bay, Delaware and*
6 *New Jersey; Delaware Inland Bays, Delaware;*
7 *Albemarle Sound, North Carolina; Sarasota*
8 *Bay, Florida; San Francisco Bay, California;*
9 *Santa Monica Bay, California; Galveston Bay,*
10 *Texas; Barataria-Terrebonne Bay estuary com-*
11 *plex, Louisiana; Indian River Lagoon, Florida;*
12 *Charlotte Harbor, Florida; Barnegat Bay, New*
13 *Jersey; and Peconic Bay, New York.”.*

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

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

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

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

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

2 “(a) *STATE WATERSHED MANAGEMENT PROGRAM.*—

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

7 “(2) *APPROVAL.*—If the Administrator does not
8 *disapprove a State watershed management program*
9 *within 180 days of its submittal or 240 days of a re-*
10 *quest for a public hearing pursuant to paragraph (3)*
11 *with respect to the program, whichever is later, such*
12 *program shall be deemed approved for the purposes of*
13 *this section. The Administrator shall approve the pro-*
14 *gram if the program includes, at a minimum, the fol-*
15 *lowing elements:*

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

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

25 “(C) *A description of the scope of the pro-*
26 *gram. In establishing the scope of the program,*

1 *the State may address one or more watersheds,*
2 *or pollutants, concurrently or sequentially. The*
3 *scope of the State program may expand over*
4 *time with respect to the watersheds, pollutants,*
5 *and factors to be addressed under the program.*
6 *In developing the State program, the State shall*
7 *take into account all regional and local govern-*
8 *ment watershed management programs that are*
9 *consistent with the proposed State program and*
10 *shall consult with the regional and local govern-*
11 *ments that developed such programs. The State*
12 *shall consider recommendations from units of*
13 *general purpose government, special purpose dis-*
14 *tricts, local water suppliers, and appropriate*
15 *water management agencies in the development*
16 *and scope of the program.*

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

21 *“(E) An identification of watershed man-*
22 *agement units for which management plans will*
23 *be developed, taking into consideration those wa-*
24 *ters where water quality is threatened or im-*
25 *paired or otherwise in need of special protection.*

1 *A watershed management unit identified under*
2 *the program may include waters and associated*
3 *land areas in more than 1 State if the Governors*
4 *of the States affected jointly designate the water-*
5 *shed management unit and may include waters*
6 *and associated lands managed or owned by the*
7 *Federal Government.*

8 *“(F) A description of the activities required*
9 *of responsible entities (as specified under sub-*
10 *section (e)(1)) and a description of the watershed*
11 *plan approval process of the State.*

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

17 *“(H) The identification of goals that will be*
18 *pursued in each watershed, including attainment*
19 *of State water quality standards (including site-*
20 *specific water quality standards) and the goals*
21 *and objectives of this Act.*

22 *“(I) An exclusion from the program of fed-*
23 *erally approved activities with respect to linear*
24 *utility facilities, such as natural gas pipelines if*

1 *such facilities extend to multiple watersheds and*
2 *result in temporary or de minimis impacts.*

3 “(J) *A description of the process for consid-*
4 *eration of and achieving consistency with the*
5 *purposes of sections 319 and 322.*

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

21 “(4) *MODIFICATION OF PROGRAM.—Each State*
22 *with a watershed management program that has been*
23 *approved by the Administrator under this section*
24 *may, at any time, modify the watershed management*
25 *program. Any such modification shall be submitted to*

1 *the Administrator and shall remain in effect unless*
2 *and until the Administrator determines that the*
3 *modified program no longer meets the requirements of*
4 *this section. In such event, the provisions of para-*
5 *graph (3) shall apply.*

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

22 *“(b) WATERSHED AREA IN 2 OR MORE STATES.—If*
23 *a watershed management unit is designated to include land*
24 *areas in more than 1 State, the Governors of States having*
25 *jurisdiction over any lands within the watershed manage-*

1 *ment unit shall jointly determine the responsible entity or*
2 *entities.*

3 *“(c) ELIGIBLE WATERSHED MANAGEMENT AND PLAN-*
4 *NING ACTIVITIES.—*

5 *“(1) IN GENERAL.—In addition to activities eli-*
6 *gible to receive assistance under other sections of this*
7 *Act as of the date of the enactment of this subsection,*
8 *the following watershed management activities con-*
9 *ducted by or on behalf of the States pursuant to a wa-*
10 *tershed management program that is approved by the*
11 *Administrator under this section shall be considered*
12 *to be eligible to receive assistance under sections 106,*
13 *205(j), 319(h), 320, and 604(b):*

14 *“(A) Characterizing the waters and land*
15 *uses.*

16 *“(B) Identifying and evaluating problems*
17 *within the watershed.*

18 *“(C) Selecting short-term and long-term*
19 *goals for watershed management.*

20 *“(D) Developing and implementing water*
21 *quality standards, including site-specific water*
22 *quality standards.*

23 *“(E) Developing and implementing meas-*
24 *ures and practices to meet identified goals.*

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

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

9 “(H) Updating the plan.

10 “(I) Conducting training and public par-
11 ticipation activities.

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

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

18 “(2) FACTORS TO BE CONSIDERED.—In selecting
19 watershed management activities to receive assistance
20 pursuant to paragraph (1), the following factors shall
21 be considered:

22 “(A) Whether or not the applicant has dem-
23 onstrated success in addressing water quality
24 problems with broadbased regional support, in-
25 cluding public and private sources.

1 “(B) Whether the activity will promote wa-
2 tershed problem prioritization.

3 “(C) Whether or not the applicant can dem-
4 onstrate an ability to use Federal resources to le-
5 verage non-Federal public and private monetary
6 and in-kind support from voluntary contribu-
7 tions, including matching and cost sharing in-
8 centives.

9 “(D) Whether or not the applicant proposes
10 to use existing public and private programs to
11 facilitate water quality improvement with the
12 assistance to be provided pursuant to paragraph
13 (1).

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

19 “(F) Whether or not such assistance will be
20 used to market mechanisms to enhance existing
21 programs.

22 “(d) PUBLIC PARTICIPATION.—Each State shall estab-
23 lish procedures to encourage the public to participate in its
24 program and in developing and implementing comprehen-
25 sive watershed management plans under this section. A

1 *State watershed management program shall include a proc-*
2 *ess for public involvement in watershed management, to the*
3 *maximum extent practicable, including the formation and*
4 *participation of public advisory groups during State water-*
5 *shed program development. States must provide adequate*
6 *public notice and an opportunity to comment on the State*
7 *watershed program prior to submittal of the program to*
8 *the Administrator for approval.*

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

10 “(1) *REQUIREMENTS.*—*A State with a watershed*
11 *management program that has been approved by the*
12 *Administrator under this section may approve or*
13 *adopt a watershed management plan if the plan satis-*
14 *fies the following conditions:*

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

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

23 “(ii) *identifies pollutants, sources, ac-*
24 *tivities, and any other factors causing the*
25 *impairment of the waters;*

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

8 “(iv) contains an implementation
9 schedule with milestones and the identifica-
10 tion of persons responsible for implementing
11 the actions;

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

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

22 “(vii) specifies a process to monitor
23 and evaluate progress toward meeting of the
24 goals of the plan; and

1 “(viii) specifies a process to revise the
2 plan as necessary.

3 “(B) For waters in the watershed attaining
4 water quality standards at the time of submis-
5 sion (including threatened waters), the plan
6 identifies the projects and activities necessary to
7 maintain water quality standards and attain or
8 maintain other goals after the date of approval
9 or adoption of the plan.

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

20 “(f) GUIDANCE.—Not later than 1 year after the date
21 of the enactment of this section, the Administrator, after
22 consultation with the States and other interested parties,
23 shall issue guidance on provisions that States may consider
24 for inclusion in watershed management programs and

1 *State-approved or State-adopted watershed management*
2 *plans under this section.*

3 “(g) *POLLUTANT TRANSFER OPPORTUNITIES.*—

4 “(1) *POLLUTANT TRANSFER PILOT PROJECTS.*—

5 *Under an approved watershed management program,*
6 *any discharger or source may apply to a State for*
7 *approval to offset the impact of its discharge or re-*
8 *lease of a pollutant by entering into arrangements,*
9 *including the payment of funds, for the implementa-*
10 *tion of controls or measures by another discharger or*
11 *source through a pollution reduction credits trading*
12 *program established as part of the watershed manage-*
13 *ment plan. The State may approve such a request if*
14 *appropriate safeguards are included to ensure compli-*
15 *ance with technology based controls and to protect the*
16 *quality of receiving waters.*

17 “(2) *INCENTIVE GRANTS.*—*The Administrator*
18 *shall allocate sums made available by appropriations*
19 *to carry out pollution reduction credits trading pro-*
20 *grams in selected watersheds throughout the country.*

21 “(3) *REPORT.*—*Not later than 36 months after*
22 *the date of the enactment of this Act, the Adminis-*
23 *trator shall transmit to Congress a report on the re-*
24 *sults of the program conducted under this sub-*
25 *section.”.*

1 **(b) INCENTIVES FOR WATERSHED MANAGEMENT.**—

2 **(1) POINT SOURCE PERMITS.**—Section 402 (33
3 U.S.C. 1342) is further amended by adding at the end
4 the following:

5 **“(r) WATERSHED MANAGEMENT.**—

6 **“(1) IN GENERAL.**—Notwithstanding any other
7 provision of this Act, a permit may be issued under
8 this section with a limitation that does not meet ap-
9 plicable water quality standards if—

10 **“(A) the receiving water is in a watershed**
11 with a watershed management plan that has
12 been approved pursuant to section 321;

13 **“(B) the plan includes assurances that**
14 water quality standards will be met within the
15 watershed by a specified date; and

16 **“(C) the point source does not have a his-**
17 tory of significant noncompliance with its efflu-
18 ent limitations under a permit issued under this
19 section, as determined by the Administrator or a
20 State with authority to issue permits under this
21 section.

22 **“(2) SYNCHRONIZED PERMIT TERMS.**—Notwith-
23 standing subsection (b)(1)(B), the term of a permit is-
24 sued under this section may be extended for an addi-
25 tional period if the discharge is located in a water-

1 *shed management unit for which a watershed man-*
2 *agement plan will be developed pursuant to section*
3 *321. Permits extended under this paragraph shall be*
4 *synchronized with the approval of the watershed man-*
5 *agement plan of a State adopted pursuant to section*
6 *321.”.*

7 (2) *MULTIPURPOSE GRANTS.—*

8 (A) *IN GENERAL.—The Administrator may*
9 *provide assistance to a State with a watershed*
10 *management program that has been approved by*
11 *the Administrator under section 321 in the form*
12 *of a multipurpose grant that would provide for*
13 *single application, work plan and review, match-*
14 *ing, oversight, and end-of-year closeout require-*
15 *ments for grant funding under sections*
16 *104(b)(3), 104(g), 106, 314(b), 319, 320, and*
17 *604(b) of the Federal Water Pollution Control*
18 *Act.*

19 (B) *TERMS.—The Administrator may at-*
20 *tach terms that shall apply for more than 1 year*
21 *to grants made pursuant to this paragraph. A*
22 *State that receives a grant under this paragraph*
23 *may focus activities funded under the provisions*
24 *referred to in subparagraph (A) on a priority*
25 *basis in a manner consistent with watershed*

1 *management plans approved by the State under*
2 *section 321(e) of the Federal Water Pollution*
3 *Control Act.*

4 (3) *PLANNING.*—*Section 604(b) (33 U.S.C.*
5 *1384(b)) is amended by adding at the end the follow-*
6 *ing: “In any fiscal year in which a State is imple-*
7 *menting a State watershed management program ap-*
8 *proved under section 321, the State may reserve up*
9 *to an additional 2 percent of the sums allotted to the*
10 *State for such fiscal year for development of water-*
11 *shed management plans under such program or*
12 *\$200,000, whichever is greater, if 50 percent of the*
13 *amount reserved under this sentence will be made*
14 *available to local entities.”.*

15 **SEC. 322. STORMWATER MANAGEMENT PROGRAMS.**

16 (a) *STATE PROGRAMS.*—*Title III (33 U.S.C. 1311 et*
17 *seq.) is further amended by adding at the end the following*
18 *new section:*

19 **“SEC. 322. STORMWATER MANAGEMENT PROGRAMS.**

20 “(a) *PURPOSE.*—*The purpose of this section is to assist*
21 *States in the development and implementation of*
22 *stormwater control programs in an expeditious and cost ef-*
23 *fective manner so as to enable the goals and requirements*
24 *of this Act to be met in each State no later than 15 years*
25 *after the date of approval of the stormwater management*

1 *program of the State. It is recognized that State stormwater*
2 *management programs need to be built on a foundation that*
3 *voluntary pollution prevention initiatives represent an ap-*
4 *proach most likely to succeed in achieving the objectives of*
5 *this Act.*

6 “(b) *STATE ASSESSMENT REPORTS.*—

7 “(1) *CONTENTS.*—*After notice and opportunity*
8 *for public comment, the Governor of each State, con-*
9 *sistent with or as part of the assessment required by*
10 *section 319, shall prepare and submit to the Adminis-*
11 *trator for approval, a report which—*

12 “(A) *identifies those navigable waters with-*
13 *in the State which, without additional action to*
14 *control pollution from stormwater discharges,*
15 *cannot reasonably be expected to attain or main-*
16 *tain applicable water quality standards or the*
17 *goals and requirements of this Act;*

18 “(B) *identifies those categories and*
19 *subcategories of stormwater discharges that add*
20 *significant pollution to each portion of the navi-*
21 *gable waters identified under subparagraph (A)*
22 *in amounts which contribute to such portion not*
23 *meeting such water quality standards or such*
24 *goals and requirements;*

1 “(C) describes the process, including inter-
2 governmental coordination and public participa-
3 tion, for identifying measures to control pollu-
4 tion from each category and subcategory of
5 stormwater discharges identified in subpara-
6 graph (B) and to reduce, to the maximum extent
7 practicable, the level of pollution resulting from
8 such discharges; and

9 “(D) identifies and describes State, local,
10 and as may be appropriate, industrial programs
11 for controlling pollution added from stormwater
12 discharges to, and improving the quality of, each
13 such portion of the navigable waters.

14 “(2) INFORMATION USED IN PREPARATION.—In
15 developing, reviewing, and revising the report re-
16 quired by this subsection, the State—

17 “(A) may rely upon information developed
18 pursuant to sections 208, 303(e), 304(f), 305(b),
19 314, 319, 320, and 321 and subsection (h) of this
20 section, information developed from the group
21 stormwater permit application process in effect
22 under section 402(p) of this Act on the day be-
23 fore the date of the enactment of this Act, and
24 such other information as the State determines is
25 appropriate; and

1 “(B) may utilize appropriate elements of
2 the waste treatment management plans developed
3 pursuant to sections 208(b) and 303, to the ex-
4 tent such elements are consistent with and fulfill
5 the requirements of this section.

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

11 “(c) STATE MANAGEMENT PROGRAMS.—

12 “(1) IN GENERAL.—In substantial consultation
13 with local governments and after notice and oppor-
14 tunity for public comment, the Governor of each State
15 for the State or in combination with the Governors of
16 adjacent States shall prepare and submit to the Ad-
17 ministrator for approval a stormwater management
18 program based on available information which the
19 State proposes to implement in the first 5 fiscal years
20 beginning after the date of submission of such man-
21 agement program for controlling pollution added from
22 stormwater discharges to the navigable waters within
23 the boundaries of the State and improving the quality
24 of such waters.

1 “(2) *SPECIFIC CONTENTS.*—Each management
2 program proposed for implementation under this sub-
3 section shall include the following:

4 “(A) *IDENTIFICATION OF MODEL MANAGE-*
5 *MENT PRACTICES AND MEASURES.*—Identifica-
6 tion of the model management practices and
7 measures which will be undertaken to reduce pol-
8 lutant loadings resulting from each category or
9 subcategory of stormwater discharges designated
10 under subsection (b)(1)(B), taking into account
11 the impact of the practice and measure on
12 ground water quality.

13 “(B) *IDENTIFICATION OF PROGRAMS AND*
14 *RESOURCES.*—Identification of programs and re-
15 sources necessary (including, as appropriate,
16 nonregulatory programs or regulatory programs,
17 enforceable policies and mechanisms, technical
18 assistance, financial assistance, education, train-
19 ing, technology transfer, and demonstration
20 projects) to manage categories or subcategories of
21 stormwater discharges to the degree necessary to
22 provide for reasonable further progress toward
23 the goal of attainment of water quality stand-
24 ards which contain the stormwater criteria es-
25 tablished under subsection (i) for designated uses

1 *of receiving waters identified under subsection*
2 *(b)(1)(A) taking into consideration specific wa-*
3 *tershed conditions, by not later than the last day*
4 *of the 15-year period beginning on the date of*
5 *approval of the State program.*

6 “(C) *PROGRAM FOR INDUSTRIAL, COMMERCIAL,*
7 *OIL, GAS, AND MINING DISCHARGES.—A*
8 *program for categories or subcategories of indus-*
9 *trial, commercial, oil, gas, and mining*
10 *stormwater discharges identified under sub-*
11 *section (b)(1)(B) for the implementation of man-*
12 *agement practices, measures, and programs iden-*
13 *tified under subparagraphs (A) and (B). The*
14 *program shall include each of the following:*

15 “(i) *VOLUNTARY ACTIVITIES.—Vol-*
16 *untary stormwater pollution prevention ac-*
17 *tivities for categories and subcategories of*
18 *such stormwater discharges that are not*
19 *contaminated by contact with material han-*
20 *dling equipment or activities, heavy indus-*
21 *trial machinery, raw materials, intermedi-*
22 *ate products, finished products, byproducts,*
23 *or waste products at the site of the indus-*
24 *trial, commercial, oil, gas, or mining activ-*

1 *ity. Such discharges may have incidental*
2 *contact with buildings or motor vehicles.*

3 *“(ii) ENFORCEABLE PLANS.—Enforce-*
4 *able stormwater pollution prevention plans*
5 *meeting the requirements of subsection (d)*
6 *for those categories and subcategories of*
7 *such stormwater discharges that are not de-*
8 *scribed in clause (i).*

9 *“(iii) GENERAL PERMITS.—General*
10 *permits for categories and subcategories of*
11 *such stormwater discharges if the State*
12 *finds, based on available information and*
13 *after providing notice and an opportunity*
14 *for comment, that reasonable further*
15 *progress toward achieving water quality*
16 *standards in receiving waters identified by*
17 *the State by the date referred to in subpara-*
18 *graph (B) cannot be made despite imple-*
19 *mentation of voluntary activities under*
20 *clause (i) or prevention plans under clause*
21 *(ii) due to the presence of a pollutant or*
22 *pollutants identified by the State. A facility*
23 *in a category or subcategory identified by*
24 *the State shall not be subject to a general*
25 *permit under this clause if the facility dem-*

1 *onstrates that stormwater discharges from*
2 *the facility are not contributing to a viola-*
3 *tion of a water quality standard established*
4 *for designated uses of the receiving waters*
5 *and are not significantly contributing the*
6 *pollutant or pollutants identified by the*
7 *State with respect to the receiving waters*
8 *under this clause.*

9 *“(iv) SITE-SPECIFIC PERMITS.—Site-*
10 *specific permits for categories or*
11 *subcategories of such stormwater discharges*
12 *or individual facilities in such categories or*
13 *subcategories if the State finds, based on*
14 *available information and after providing*
15 *notice and an opportunity for comment,*
16 *that reasonable further progress toward*
17 *achieving water quality standards in receiv-*
18 *ing waters identified by the State by the*
19 *date referred to in subparagraph (B) cannot*
20 *be made despite implementation of vol-*
21 *untary activities under clause (i) or preven-*
22 *tion plans under clause (ii) and general*
23 *permits under clause (iii) due to the pres-*
24 *ence of a pollutant or pollutants identified*
25 *by the State. A facility in a category or*

1 *subcategory identified by the State shall not*
2 *be subject to a site-specific permit under*
3 *this clause if the facility demonstrates that*
4 *stormwater discharges from the facility are*
5 *not contributing to a violation of a water*
6 *quality standard established for designated*
7 *uses of the receiving waters and are not sig-*
8 *nificantly contributing the pollutant or pol-*
9 *lutants identified by the State with respect*
10 *to the receiving waters under this clause.*

11 “(v) *EXEMPTION OF SMALL BUSI-*
12 *NESSES.—An exemption for small busi-*
13 *nesses identified under subsection (b)(1)(B)*
14 *from clause (iii), relating to general per-*
15 *mits, and clause (iv), relating to site-spe-*
16 *cific permits, unless the State finds that,*
17 *without the imposition of such permits, such*
18 *discharges will have a significant adverse*
19 *effect on water quality.*

20 “(D) *PROGRAM FOR MUNICIPAL DIS-*
21 *CHARGES.—A program for municipal*
22 *stormwater discharges identified under sub-*
23 *section (b)(1)(B) to reduce pollutant loadings*
24 *from categories and subcategories of municipal*
25 *stormwater discharges.*

1 “(E) *PROGRAM FOR CONSTRUCTION ACTIVITIES.*—A program for categories and
2 subcategories of stormwater discharges from construction activities identified under subsection
3 (b)(1)(B) for implementation of management practices, measures, and programs identified
4 under subparagraphs (A) and (B). In developing the program, the State shall consider current
5 State and local requirements, focus on pollution prevention through the use of model management
6 practices and measures, and take into account the land area disturbed by the construction activities.
7 The State may require effluent limits or other numerical standards to control pollutants
8 in stormwater discharges from construction activities only if the State finds, after providing
9 notice and an opportunity for comment, that such standards are necessary to achieve water
10 quality standards by the date referred to in subparagraph (B).
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21 “(F) *BAD ACTOR PROVISIONS.*—Provisions for taking any actions deemed necessary by the
22 State to meet the goals and requirements of this section with respect to dischargers which the
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1 *State identifies, after notice and opportunity for*
2 *hearing—*

3 “(i) *as having a history of stormwater*
4 *noncompliance under this Act, State law, or*
5 *the regulations issued thereunder or the*
6 *terms and conditions of permits, orders, or*
7 *administrative actions issued pursuant*
8 *thereto; or*

9 “(ii) *as posing an imminent threat to*
10 *human health and the environment.*

11 “(G) *SCHEDULE.—A schedule containing*
12 *interim goals and milestones for making reason-*
13 *able progress toward the attainment of standards*
14 *as set forth in subparagraph (B) established for*
15 *the designated uses of receiving waters, taking*
16 *into account specific watershed conditions, which*
17 *may be demonstrated by one or any combination*
18 *of improvements in water quality (including bio-*
19 *logical indicators), documented implementation*
20 *of voluntary stormwater discharge control meas-*
21 *ures, or adoption of enforceable stormwater dis-*
22 *charge control measures.*

23 “(H) *CERTIFICATION OF ADEQUATE AU-*
24 *THORITY.—*

1 “(i) *IN GENERAL.*—A certification by
2 the Attorney General of the State or States
3 (or the chief attorney of any State water
4 pollution control agency that has authority
5 under State law to make such certification)
6 that the laws of the State or States, as the
7 case may be, provide adequate authority to
8 implement such management program or, if
9 there is not such adequate authority, a list
10 of such additional authorities as will be
11 necessary to implement such management
12 program.

13 “(ii) *COMMITMENT.*—A schedule for
14 seeking, and a commitment by the State or
15 States to seek, such additional authorities
16 as expeditiously as practicable.

17 “(I) *IDENTIFICATION OF FEDERAL FINAN-*
18 *CIAL ASSISTANCE PROGRAMS.*—An identification
19 of Federal financial assistance programs and
20 Federal development projects for which the State
21 will review individual assistance applications or
22 development projects for their effect on water
23 quality pursuant to the procedures set forth in
24 Executive Order 12372 as in effect on September
25 17, 1983, to determine whether such assistance

1 *applications or development projects would be*
2 *consistent with the program prepared under this*
3 *subsection; for the purposes of this subparagraph,*
4 *identification shall not be limited to the assist-*
5 *ance programs or development projects subject to*
6 *Executive Order 12372 but may include any*
7 *programs listed in the most recent Catalog of*
8 *Federal Domestic Assistance which may have an*
9 *effect on the purposes and objectives of the State's*
10 *stormwater management program.*

11 “(J) *MONITORING.*—*A description of the*
12 *monitoring of navigable waters or other assess-*
13 *ment which will be carried out under the pro-*
14 *gram for the purposes of monitoring and assess-*
15 *ing the effectiveness of the program, including*
16 *the attainment of interim goals and milestones.*

17 “(K) *IDENTIFICATION OF CERTAIN INCON-*
18 *SISTENT FEDERAL ACTIVITIES.*—*An identifica-*
19 *tion of activities on Federal lands in the State*
20 *that are inconsistent with the State management*
21 *program.*

22 “(L) *IDENTIFICATION OF GOALS AND MILE-*
23 *STONES.*—*An identification of goals and mile-*
24 *stones for progress in attaining water quality*
25 *standards, including a projected date for attain-*

1 *ing such standards as expeditiously as prac-*
2 *ticable but not later than 15 years after the date*
3 *of approval of the State program for each of the*
4 *waters listed pursuant to subsection (b).*

5 “(3) *UTILIZATION OF LOCAL AND PRIVATE EX-*
6 *PERTS.—In developing and implementing a manage-*
7 *ment program under this subsection, a State shall, to*
8 *the maximum extent practicable, involve local public*
9 *and private agencies and organizations which have*
10 *expertise in stormwater management.*

11 “(4) *DEVELOPMENT ON WATERSHED BASIS.—A*
12 *State shall, to the maximum extent practicable, de-*
13 *velop and implement a stormwater management pro-*
14 *gram under this subsection on a watershed-by-water-*
15 *shed basis within such State.*

16 “(5) *REGULATIONS DEFINING SMALL BUSI-*
17 *NESSES.—The Administrator shall propose, not later*
18 *than 6 months after the date of the enactment of this*
19 *section, and issue, not later than 1 year after the date*
20 *of such enactment, regulations to define small busi-*
21 *nesses for purposes of this section.*

22 “(d) *STORMWATER POLLUTION PREVENTION PLANS.—*

23 “(1) *IMPLEMENTATION DEADLINE.—Each*
24 *stormwater pollution prevention plan required under*
25 *subsection (c)(2)(C)(ii) shall be implemented not later*

1 *than 180 days after the date of its development and*
2 *shall be annually updated.*

3 *“(2) PLAN CONTENTS.—Each stormwater pollu-*
4 *tion prevention plan required under subsection*
5 *(c)(2)(C)(ii) shall include the following components:*

6 *“(A) Establishment and appointment of a*
7 *stormwater pollution prevention team.*

8 *“(B) Description of potential pollutant*
9 *sources.*

10 *“(C) An annual site inspection evaluation.*

11 *“(D) An annual visual stormwater dis-*
12 *charge inspection.*

13 *“(E) Measures and controls for reducing*
14 *stormwater pollution, including, at a minimum,*
15 *model management practices and measures that*
16 *are flexible, technologically feasible, and eco-*
17 *nomically practicable. For purposes of this para-*
18 *graph, the term ‘model management practices*
19 *and measures’ means preventive maintenance,*
20 *good housekeeping, spill prevention and response,*
21 *employee training, and sediment and erosion*
22 *control.*

23 *“(F) Prevention of illegal discharges of*
24 *nonstormwater through stormwater outfalls.*

1 “(3) *CERTIFICATION.*—Each facility subject to
2 subsection (c)(2)(C)(ii) shall certify to the State that
3 it has implemented a stormwater pollution prevention
4 plan or a State or local equivalent and that the plan
5 is intended to reduce possible pollutants in the facili-
6 ty’s stormwater discharges. The certification must be
7 signed by a responsible officer of the facility and must
8 be affixed to the plan subject to review by the appro-
9 priate State program authority. If a facility makes
10 such a certification, such facility shall not be subject
11 to permit or permit application requirements, man-
12 datory model management practices and measures,
13 analytical monitoring, effluent limitations or other
14 numerical standards or guidelines under subsection
15 (c)(2)(C)(ii).

16 “(4) *PLAN ADEQUACY.*—The State stormwater
17 management program shall set forth the basis upon
18 which the adequacy of a plan prepared by a facility
19 subject to subsection (c)(2)(C)(ii) will be determined.
20 In making such determination, the State shall con-
21 sider benefits to the environment, physical require-
22 ments, technological feasibility and economic costs,
23 human health or safety, and nature of the activity at
24 the facility or site.

25 “(e) *ADMINISTRATIVE PROVISIONS.*—

1 “(1) *COOPERATION REQUIREMENT.*—Any report
2 required by subsection (b) and any management pro-
3 gram and report required by subsection (c) shall be
4 developed in cooperation with local, substate, regional,
5 and interstate entities which are responsible for im-
6 plementing stormwater management programs.

7 “(2) *TIME PERIOD FOR SUBMISSION OF MANAGE-*
8 *MENT PROGRAMS.*—Each management program shall
9 be submitted to the Administrator within 30 months
10 of the issuance by the Administrator of the final guid-
11 ance under subsection (l) and every 5 years thereafter.
12 Each program submission after the initial submission
13 following the date of the enactment of the Clean Water
14 Amendments of 1995 shall include a demonstration of
15 reasonable further progress toward the goal of attain-
16 ing water quality standards as set forth in subsection
17 (c)(2) established for designated uses of receiving wa-
18 ters taking into account specific watershed conditions
19 by not later than the date referred to in subsection
20 (b)(2)(B), including a documentation of the degree to
21 which the State has achieved the interim goals and
22 milestones contained in the previous program submis-
23 sion. Such demonstration shall take into account the
24 adequacy of Federal funding under this section.

25 “(3) *TRANSITION.*—

1 “(A) *IN GENERAL.*—Permits, including
2 *group and general permits, issued pursuant to*
3 *section 402(p), as in effect on the day before the*
4 *date of the enactment of this section, shall re-*
5 *main in effect until the effective date of a State*
6 *stormwater management program under this sec-*
7 *tion. Stormwater dischargers shall continue to*
8 *implement any stormwater management prac-*
9 *tices and measures required under such permits*
10 *until such practices and measures are modified*
11 *pursuant to this subparagraph or pursuant to a*
12 *State stormwater management program. Prior to*
13 *the effective date of a State stormwater manage-*
14 *ment program, stormwater dischargers may sub-*
15 *mit for approval proposed revised stormwater*
16 *management practices and measures to the*
17 *State, in the case of a State with an approved*
18 *program under section 402, or the Adminis-*
19 *trator. Upon notice of approval by the State or*
20 *the Administrator, the stormwater discharger*
21 *shall implement the revised stormwater manage-*
22 *ment practices and measures which, for dis-*
23 *charges subject to subsection (c)(2)(C)(i),*
24 *(c)(2)(D), (c)(2)(E), or (c)(2)(F), may be vol-*
25 *untary pollution prevention activities. A*

1 *stormwater discharger operating under a permit*
2 *continued in effect under this subparagraph shall*
3 *not be subject to citizens suits under section 505.*

4 “(B) NEW FACILITIES.—A new
5 *nonmunicipal source of stormwater discharge*
6 *subject to a group or general permit continued*
7 *in effect under subparagraph (A) shall notify the*
8 *State or the Administrator, as appropriate, of*
9 *the source’s intent to be covered by and shall con-*
10 *tinue to comply with such permit. Until the ef-*
11 *fective date of a State stormwater management*
12 *program under this section, the State may im-*
13 *pose enforceable stormwater management meas-*
14 *ures and practices on a new nonmunicipal*
15 *source of stormwater discharge not subject to*
16 *such a permit if the State finds that the*
17 *stormwater discharge is likely to pose an immi-*
18 *nent threat to human health and the environ-*
19 *ment or to pose significant impairment of water*
20 *quality standards.*

21 “(C) SPECIAL RULE.—Industrial facilities
22 *included in a Part 1 group stormwater permit*
23 *application approved by the Administrator pur-*
24 *suant to section 122.26(c)(2) of title 40, Code of*
25 *Federal Regulations, as in effect on the date of*

1 *the enactment of this section, may, in lieu of*
2 *continued operation under existing permits, cer-*
3 *tify to the State or the Administrator, as appro-*
4 *priate, that such facilities are implementing a*
5 *stormwater pollution prevention plan consistent*
6 *with subsection (d). Upon such certification, the*
7 *facility will no longer be subject to such permit.*

8 “(D) *PRE-1987 PERMITS.*—*Notwithstanding*
9 *the repeal of section 402(p) by the Clean Water*
10 *Amendments Act of 1995 or any other amend-*
11 *ment made to section 402 on or before the date*
12 *of the enactment of such Act, a discharge with*
13 *respect to which a permit has been issued under*
14 *section 402 before February 4, 1987, shall not be*
15 *subject to the provisions of this section.*

16 “(E) *ANTIBACKSLIDING.*—*Section 402(o)*
17 *shall not apply to any activity carried out in ac-*
18 *cordance with this paragraph.*

19 “(f) *APPROVAL OR DISAPPROVAL OF REPORTS OR*
20 *MANAGEMENT PROGRAMS.*—

21 “(1) *DEADLINE.*—*Subject to paragraph (2), not*
22 *later than 180 days after the date of submission to the*
23 *Administrator of any report or revised report or*
24 *management program under this section, the Admin-*
25 *istrator shall either approve or disapprove such report*

1 or management program, as the case may be. The Ad-
2 ministrators may approve a portion of a management
3 program under this subsection. If the Administrator
4 does not disapprove a report, management program,
5 or portion of a management program in such 180-day
6 period, such report, management program, or portion
7 shall be deemed approved for purposes of this section.

8 “(2) *PROCEDURE FOR DISAPPROVAL.*—If, after
9 notice and opportunity for public comment and con-
10 sultation with appropriate Federal and State agen-
11 cies and other interested persons, the Administrator
12 determines that—

13 “(A) the proposed management program or
14 any portion thereof does not meet the require-
15 ments of subsection (b) of this section or is not
16 likely to satisfy, in whole or in part, the goals
17 and requirements of this Act;

18 “(B) adequate authority does not exist, or
19 adequate resources are not available, to imple-
20 ment such program or portion; or

21 “(C) the practices and measures proposed in
22 such program or portion will not result in rea-
23 sonable progress toward the goal of attainment of
24 applicable water quality standards as set forth
25 in subsection (c)(2) established for designated

1 *uses of receiving waters taking into consideration*
2 *specific watershed conditions as expeditiously as*
3 *possible but not later than 15 years after ap-*
4 *proval of a State stormwater management pro-*
5 *gram under this section;*

6 *the Administrator shall within 6 months of the re-*
7 *ceipt of the proposed program notify the State of any*
8 *revisions or modifications necessary to obtain ap-*
9 *proval. The State shall have an additional 6 months*
10 *to submit its revised management program, and the*
11 *Administrator shall approve or disapprove such re-*
12 *vised program within 3 months of receipt.*

13 “(3) *FAILURE OF STATE TO SUBMIT REPORT.—*
14 *If a Governor of a State does not submit a report or*
15 *revised report required by subsection (b) within the*
16 *period specified by subsection (e)(2), the Adminis-*
17 *trator shall, within 18 months after the date on which*
18 *such report is required to be submitted under sub-*
19 *section (b), prepare a report for such State which*
20 *makes the identifications required by paragraphs*
21 *(1)(A) and (1)(B) of subsection (b). Upon completion*
22 *of the requirement of the preceding sentence and after*
23 *notice and opportunity for a comment, the Adminis-*
24 *trator shall report to Congress of the actions of the*
25 *Administrator under this section.*

1 “(4) *FAILURE OF STATE TO SUBMIT MANAGE-*
2 *MENT PROGRAM.—*

3 “(A) *PROGRAM MANAGEMENT BY ADMINIS-*
4 *TRATOR.—Subject to paragraph (5), if a State*
5 *fails to submit a management program or re-*
6 *vised management program under subsection (c)*
7 *or the Administrator does not approve such*
8 *management program, the Administrator shall*
9 *prepare and implement a management program*
10 *for controlling pollution added from stormwater*
11 *discharges to the navigable waters within the*
12 *State and improving the quality of such waters*
13 *in accordance with subsection (c).*

14 “(B) *NOTICE AND HEARING.—If the Admin-*
15 *istrator intends to disapprove a program submit-*
16 *ted by a State the Administrator shall first no-*
17 *tify the Governor of the State, in writing, of the*
18 *modifications necessary to meet the requirements*
19 *of this section. The Administrator shall provide*
20 *adequate public notice and an opportunity for a*
21 *public hearing for all interested parties.*

22 “(C) *STATE REVISION OF ITS PROGRAM.—*
23 *If, after taking into account the level of funding*
24 *actually provided as compared with the level au-*
25 *thorized, the Administrator determines that a*

1 *State has failed to demonstrate reasonable fur-*
2 *ther progress toward the attainment of water*
3 *quality standards as required, the State shall re-*
4 *verse its program within 12 months of that deter-*
5 *mination in a manner sufficient to achieve at-*
6 *tainment of applicable water quality standards*
7 *by the deadline established by this section. If a*
8 *State fails to make such a program revision or*
9 *the Administrator does not approve such a revi-*
10 *sion, the Administrator shall prepare and imple-*
11 *ment a stormwater management program for the*
12 *State.*

13 “(5) *LOCAL MANAGEMENT PROGRAMS; TECH-*
14 *NICAL ASSISTANCE.—If a State fails to submit a*
15 *management program under subsection (c) or the Ad-*
16 *ministrator does not approve such a management*
17 *program, a local public agency or organization which*
18 *has expertise in, and authority to, control water pol-*
19 *lution resulting from nonpoint sources in any area of*
20 *such State which the Administrator determines is of*
21 *sufficient geographic size may, with approval of such*
22 *State, request the Administrator to provide, and the*
23 *Administrator shall provide, technical assistance to*
24 *such agency or organization in developing for such*
25 *area a management program which is described in*

1 *subsection (c) and can be approved pursuant to this*
2 *subsection. After development of such management*
3 *program, such agency or organization shall submit*
4 *such management program to the Administrator for*
5 *approval.*

6 *“(g) INTERSTATE MANAGEMENT CONFERENCE.—*

7 *“(1) CONVENING OF CONFERENCE; NOTIFICATION;*
8 *PURPOSE.—*

9 *“(A) CONVENING OF CONFERENCE.—If any*
10 *portion of the navigable waters in any State*
11 *which is implementing a management program*
12 *approved under this section is not meeting ap-*
13 *licable water quality standards or the goals and*
14 *requirements of this Act as a result, in whole or*
15 *in part, of pollution from stormwater in another*
16 *State, such State may petition the Administrator*
17 *to convene, and the Administrator shall convene,*
18 *a management conference of all States which*
19 *contribute significant pollution resulting from*
20 *stormwater to such portion.*

21 *“(B) NOTIFICATION.—If, on the basis of in-*
22 *formation available, the Administrator deter-*
23 *mines that a State is not meeting applicable*
24 *water quality standards or the goals and re-*
25 *quirements of this Act as a result, in whole or*

1 *in part, of significant pollution from stormwater*
2 *in another State, the Administrator shall notify*
3 *such States.*

4 “(C) *TIME LIMIT.*—*The Administrator may*
5 *convene a management conference under this*
6 *paragraph not later than 180 days after giving*
7 *such notification under subparagraph (B),*
8 *whether or not the State which is not meeting*
9 *such standards requests such conference.*

10 “(D) *PURPOSE.*—*The purpose of the con-*
11 *ference shall be to develop an agreement among*
12 *the States to reduce the level of pollution result-*
13 *ing from stormwater in the portion of the navi-*
14 *gable waters and to improve the water quality of*
15 *such portion.*

16 “(E) *PROTECTION OF WATER RIGHTS.*—
17 *Nothing in the agreement shall supersede or ab-*
18 *rogate rights to quantities of water which have*
19 *been established by interstate water compacts,*
20 *Supreme Court decrees, or State water laws.*

21 “(F) *LIMITATIONS.*—*This subsection shall*
22 *not apply to any pollution which is subject to*
23 *the Colorado River Basin Salinity Control Act.*
24 *The requirement that the Administrator convene*

1 *a management conference shall not be subject to*
2 *the provisions of section 505 of this Act.*

3 “(2) *STATE MANAGEMENT PROGRAM REQUIRE-*
4 *MENT.—To the extent that the States reach agreement*
5 *through such conference, the management programs of*
6 *the States which are parties to such agreements and*
7 *which contribute significant pollution to the navigable*
8 *waters or portions thereof not meeting applicable*
9 *water quality standards or goals and requirements of*
10 *this Act will be revised to reflect such agreement. Such*
11 *management programs shall be consistent with Fed-*
12 *eral and State law.*

13 “(h) *GRANTS FOR STORMWATER RESEARCH.—*

14 “(1) *IN GENERAL.—To determine the most cost-*
15 *effective and technologically feasible means of improv-*
16 *ing the quality of the navigable waters and to develop*
17 *the criteria required pursuant to subsection (i) of this*
18 *Act, the Administrator shall establish an initiative*
19 *through which the Administrator shall fund State and*
20 *local demonstration programs and research to—*

21 “(A) *identify adverse impacts of stormwater*
22 *discharges on receiving waters;*

23 “(B) *identify the pollutants in stormwater*
24 *which cause impact; and*

1 “(C) test innovative approaches to address
2 the impacts of source controls and model man-
3 agement practices and measures for runoff from
4 municipal storm sewers.

5 Persons conducting demonstration programs and re-
6 search funded under this subsection shall also take
7 into account the physical nature of episodic
8 stormwater flows, the varying pollutants in
9 stormwater, the actual risk the flows pose to the des-
10 ignated beneficial uses, and the ability of natural
11 ecosystems to accept temporary stormwater events.

12 “(2) AWARD OF FUNDS.—The Administrator
13 shall award the demonstration and research program
14 funds taking into account regional and population
15 variations.

16 “(3) AUTHORIZATION OF APPROPRIATIONS.—
17 There are authorized to be appropriated to carry out
18 this subsection \$20,000,000 per fiscal year for fiscal
19 years 1996 through 2000. Such sums shall remain
20 available until expended.

21 “(4) INADEQUATE FUNDING.—For each fiscal
22 year beginning after the date of the enactment of this
23 subsection for which the total amounts appropriated
24 to carry out this subsection are less than the total
25 amounts authorized to be appropriated pursuant to

1 *this subsection, any deadlines established under sub-*
2 *section (c)(2)(L) for compliance with water quality*
3 *standards shall be postponed by 1 year.*

4 “(i) *DEVELOPMENT OF STORMWATER CRITERIA.*—

5 “(1) *IN GENERAL.*—*To reflect the episodic char-*
6 *acter of stormwater which results in significant*
7 *variances in the volume, hydraulics, hydrology, and*
8 *pollutant load associated with stormwater discharges,*
9 *the Administrator shall establish, as an element of the*
10 *water quality standards established for the designated*
11 *uses of the navigable waters, stormwater criteria*
12 *which protect the navigable waters from impairment*
13 *of the designated beneficial uses caused by stormwater*
14 *discharges. The criteria shall be technologically and*
15 *financially feasible and may include performance*
16 *standards, guidelines, guidance, and model manage-*
17 *ment practices and measures and treatment require-*
18 *ments, as appropriate, and as identified in subsection*
19 *(h)(1).*

20 “(2) *INFORMATION TO BE USED IN DEVELOP-*
21 *MENT.*—*The stormwater discharge criteria to be estab-*
22 *lished under this subsection—*

23 “(A) *shall be developed from—*

1 “(i) the findings and conclusions of the
2 demonstration programs and research con-
3 ducted under subsection (h);

4 “(ii) the findings and conclusions of
5 the research and monitoring activities of
6 stormwater dischargers performed in com-
7 pliance with permit requirements of this
8 Act; and

9 “(iii) other relevant information, in-
10 cluding information submitted to the Ad-
11 ministrator under the industrial group per-
12 mit application process in effect under sec-
13 tion 402 of this Act on the day before the
14 date of the enactment of this section;

15 “(B) shall be developed in consultation with
16 persons with expertise in the management of
17 stormwater (including officials of State and local
18 government, industrial and commercial
19 stormwater dischargers, and public interest
20 groups); and

21 “(C) shall be established as an element of
22 the water quality standards that are developed
23 and implemented under this Act by not later
24 than December 31, 2008.

1 “(j) *COLLECTION OF INFORMATION.*—*The Adminis-*
2 *trator shall collect and make available, through publications*
3 *and other appropriate means, information pertaining to*
4 *model management practices and measures and implemen-*
5 *tation methods, including, but not limited to—*

6 “(1) *information concerning the costs and rel-*
7 *ative efficiencies of model management practices and*
8 *measures for reducing pollution from stormwater dis-*
9 *charges; and*

10 “(2) *available data concerning the relationship*
11 *between water quality and implementation of various*
12 *management practices to control pollution from*
13 *stormwater discharges.*

14 “(k) *REPORTS OF ADMINISTRATOR.*—

15 “(1) *BIENNIAL REPORTS.*—*Not later than Janu-*
16 *ary 1, 1996, and biennially thereafter, the Adminis-*
17 *trator shall transmit to the Committee on Transpor-*
18 *tation and Infrastructure of the House of Representa-*
19 *tives and the Committee on Environment and Public*
20 *Works of the Senate, a report for the preceding fiscal*
21 *year on the activities and programs implemented*
22 *under this section and the progress made in reducing*
23 *pollution in the navigable waters resulting from*
24 *stormwater discharges and improving the quality of*
25 *such waters.*

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

3 “(A) *describe the management programs*
4 *being implemented by the States by types of af-*
5 *ected navigable waters, categories and*
6 *subcategories of stormwater discharges, and types*
7 *of measures being implemented;*

8 “(B) *describe the experiences of the States*
9 *in adhering to schedules and implementing the*
10 *measures under subsection (c);*

11 “(C) *describe the amount and purpose of*
12 *grants awarded pursuant to subsection (h);*

13 “(D) *identify, to the extent that information*
14 *is available, the progress made in reducing pol-*
15 *lutant loads and improving water quality in the*
16 *navigable waters;*

17 “(E) *indicate what further actions need to*
18 *be taken to attain and maintain in those navi-*
19 *gable waters (i) applicable water quality stand-*
20 *ards, and (ii) the goals and requirements of this*
21 *Act;*

22 “(F) *include recommendations of the Ad-*
23 *ministrator concerning future programs (includ-*
24 *ing enforcement programs) for controlling pollu-*
25 *tion from stormwater; and*

1 “(G) identify the activities and programs of
2 departments, agencies, and instrumentalities of
3 the United States that are inconsistent with the
4 stormwater management programs implemented
5 by the States under this section and rec-
6 ommended modifications so that such activities
7 and programs are consistent with and assist the
8 States in implementation of such management
9 programs.

10 “(I) GUIDANCE ON MODEL STORMWATER MANAGE-
11 MENT PRACTICES AND MEASURES.—

12 “(1) IN GENERAL.—The Administrator, in con-
13 sultation with appropriate Federal, State, and local
14 departments and agencies, and after providing notice
15 and opportunity for public comment, shall publish
16 guidance to identify model management practices and
17 measures which may be undertaken, at the discretion
18 of the State or appropriate entity, under a manage-
19 ment program established pursuant to this section. In
20 preparing such guidance, the Administrator shall con-
21 sider integration of a stormwater management pro-
22 gram of a State with, and the relationship of such
23 program to, the nonpoint source management pro-
24 gram of the State under section 319.

1 “(2) *PUBLICATION.*—*The Administrator shall*
2 *publish proposed guidance under this subsection not*
3 *later than 6 months after the date of the enactment*
4 *of this subsection and shall publish final guidance*
5 *under this subsection not later than 18 months after*
6 *such date of enactment. The Administrator shall peri-*
7 *odically review and revise the final guidance upon*
8 *adequate notice and opportunity for public comment*
9 *at least once every 3 years after its publication.*

10 “(3) *MODEL MANAGEMENT PRACTICES AND*
11 *MEASURES DEFINED.*—*For the purposes of this sub-*
12 *section, the term “model management practices and*
13 *measures” means economically achievable measures*
14 *for the control of pollutants from stormwater dis-*
15 *charges which reflect the most cost-effective degree of*
16 *pollutant reduction achievable through the applica-*
17 *tion of the best available practices, technologies, proc-*
18 *esses, siting criteria, operating methods, or other al-*
19 *ternatives.*

20 “(m) *ENFORCEMENT WITH RESPECT TO STORMWATER*
21 *DISCHARGERS VIOLATING STATE MANAGEMENT PRO-*
22 *GRAMS.*—*Stormwater dischargers that do not comply with*
23 *State management program requirements under subsection*
24 *(c) are subject to applicable enforcement actions under sec-*
25 *tions 309 and 505 of this Act.*

1 “(n) *ENTRY AND INSPECTION.*—In order to carry out
2 the objectives of this section, an authorized representative
3 of a State, upon presentation of his or her credentials, shall
4 have a right of entry to, upon, or through any property
5 at which a stormwater discharge or records required to be
6 maintained under the State stormwater management pro-
7 gram are located.

8 “(o) *LIMITATION ON DISCHARGES REGULATED UNDER*
9 *WATERSHED MANAGEMENT PROGRAM.*—Stormwater dis-
10 charges regulated under section 321 in a manner consistent
11 with this section shall not be subject to this section.

12 “(p) *MINERAL EXPLORATION AND MINING SITES.*—

13 “(1) *EXPLORATION SITES.*—For purposes of sub-
14 section (c)(2)(F), stormwater discharges from con-
15 struction activities shall include stormwater dis-
16 charges from mineral exploration activities; except
17 that, for exploration at abandoned mined lands, the
18 stormwater program under subsection (c)(2)(F) shall
19 be limited to the control of pollutants added to
20 stormwater by contact with areas disturbed by the ex-
21 ploration activity.

22 “(2) *MINING SITES.*—Stormwater discharges at
23 ore mining and dressing sites shall be subject to this
24 section. If any such discharge is commingled with
25 mine drainage or process wastewater from mining op-

1 *erations, such discharge shall be treated as a dis-*
2 *charge from a point source for purposes of this Act.*

3 *“(3) ABANDONED MINED LANDS.—Stormwater*
4 *discharges from abandoned mined lands shall be sub-*
5 *ject to section 319; except that if the State, after no-*
6 *tice and an opportunity for comment, finds that regu-*
7 *lation of such stormwater discharges under this sec-*
8 *tion is necessary to make reasonable further progress*
9 *toward achieving water quality standards by the date*
10 *referred to in subsection (c)(2)(B), such discharges*
11 *shall be subject to this section.*

12 *“(4) SURFACE MINING CONTROL AND RECLAMA-*
13 *TION ACT SITES.—Notwithstanding paragraph (3),*
14 *stormwater discharges from abandoned mined lands*
15 *site which are subject to the Surface Mining Control*
16 *and Reclamation Act of 1977 (30 U.S.C. 1201–1328)*
17 *shall be subject to section 319.*

18 *“(5) DEFINITIONS.—For purposes of this sub-*
19 *section, the following definitions apply:*

20 *“(A) ABANDONED MINED LANDS.—The term*
21 *‘abandoned mined lands’ means lands which*
22 *were used for mineral activities and abandoned*
23 *or left in an inadequate reclamation status and*
24 *for which there is no continuing reclamation re-*
25 *sponsibility under State or Federal laws.*

1 “(B) *PROCESS WASTE WATER*.—The term
2 ‘process waste water’ means any water other
3 than stormwater which comes into contact with
4 any raw material, intermediate product, finished
5 product, byproduct, or waste product as part of
6 any mineral beneficiation processes employed at
7 the site.

8 “(C) *MINE DRAINAGE*.—The term ‘mine
9 drainage’ means any water drained, pumped, or
10 siphoned from underground mine workings or
11 mine pits, but such term shall not include
12 stormwater runoff from tailings dams, dikes,
13 overburden, waste rock piles, haul roads, access
14 roads, and ancillary facility areas.”.

15 (b) *REPEAL OF LIMITATION ON PERMIT REQUIRE-*
16 *MENT*.—Section 402(l) (33 U.S.C. 1342(l)) is repealed.

17 (c) *REPEAL OF MUNICIPAL AND INDUSTRIAL*
18 *STORMWATER DISCHARGES PROGRAM*.—Section 402(p) (33
19 *U.S.C. 1342(p))* is repealed.

20 (d) *DEFINITIONS*.—Section 502 (33 U.S.C. 1362) is
21 amended—

22 (1) by adding at the end of paragraph (14) the
23 following: “The term does not include a stormwater
24 discharge.”; and

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

1 “(25) The term ‘stormwater’ means runoff from rain,
2 snow melt, or any other precipitation-generated surface
3 runoff.

4 “(26) The term ‘stormwater discharge’ means a dis-
5 charge from any conveyance which is used for the collecting
6 and conveying of stormwater to navigable waters and which
7 is associated with a municipal storm sewer system or in-
8 dustrial, commercial, oil, gas, or mining activities or con-
9 struction activities.”.

10 **SEC. 323. RISK ASSESSMENT AND DISCLOSURE REQUIRE-**
11 **MENTS.**

12 Title III (33 U.S.C. 1311–1330) is further amended
13 by adding at the end the following:

14 **“SEC. 323. RISK ASSESSMENT AND DISCLOSURE REQUIRE-**
15 **MENTS.**

16 “(a) *GENERAL RULE.*—The Administrator or the Sec-
17 retary of the Army (hereinafter in this section referred to
18 as the ‘Secretary’), as appropriate, shall develop and pub-
19 lish a risk assessment before issuing—

20 “(1) any standard, effluent limitation, water
21 quality criterion, water quality based requirement, or
22 other regulatory requirement under this Act (other
23 than a permit or a purely procedural requirement);
24 or

1 “(2) any guidance under this Act which, if is-
2 sued as a regulatory requirement, would result in an
3 annual increase in cost of \$25,000,000 or more.

4 “(b) *CONTENTS OF RISK ASSESSMENTS.*—A risk as-
5 sessment developed under subsection (a), at a minimum,
6 shall—

7 “(1) identify and use all relevant and readily ob-
8 tainable data and information of sufficient quality,
9 including data and information submitted to the
10 Agency in a timely fashion;

11 “(2) identify and discuss significant assump-
12 tions, inferences, or models used in the risk assess-
13 ment;

14 “(3) measure the sensitivity of the results to the
15 significant assumptions, inferences, or models that the
16 risk assessment relies upon;

17 “(4) with respect to significant assumptions, in-
18 ferences, or models that the results are sensitive to,
19 identify and discuss—

20 “(A) credible alternatives and the basis for
21 the rejection of such alternatives;

22 “(B) the scientific or policy basis for the se-
23 lection of such assumptions, inferences, or mod-
24 els; and

1 “(C) the extent to which any such assump-
2 tions, inferences, or models have been validated
3 or conflict with empirical data;

4 “(5) to the maximum extent practical, provide a
5 description of the risk, including, at minimum, best
6 estimates or other unbiased representation of the most
7 plausible level of risk and a description of the specific
8 populations or natural resources subject to the assess-
9 ment;

10 “(6) to the maximum extent practical, provide a
11 quantitative estimate of the uncertainty inherent in
12 the risk assessment; and

13 “(7) compare the nature and extent of the risk
14 identified in the risk assessment to other risks to
15 human health and the environment.

16 “(c) *RISK ASSESSMENT GUIDANCE*.—Not later than
17 180 days after the date of the enactment of this section, and
18 after providing notice and opportunity for public comment,
19 the Administrator, in consultation with the Secretary, shall
20 issue, and thereafter revise, as appropriate, guidance for
21 conducting risk assessments under subsection (a).

22 “(d) *MARGIN OF SAFETY*.—When establishing a mar-
23 gin of safety for use in developing a regulatory requirement
24 described in subsection (a)(1) or guidance described in sub-
25 section (a)(2), the Administrator or the Secretary, as ap-

1 *propriate, shall provide, as part of the risk assessment*
2 *under subsection (a), an explicit and, to the extent prac-*
3 *tical, quantitative description of the margin of safety rel-*
4 *ative to an unbiased estimate of the risk being addressed.*

5 “(e) *DISCRETIONARY EXEMPTIONS.*—*The Adminis-*
6 *trator or the Secretary, as appropriate, may exempt from*
7 *the requirements of this section any risk assessment pre-*
8 *pared in support of a regulatory requirement described in*
9 *subsection (a)(1) which is likely to result in annual increase*
10 *in cost of less than \$25,000,000. Such exemptions may be*
11 *made for specific risk assessments or classes of risk assess-*
12 *ments.*

13 “(f) *GENERAL RULE ON APPLICABILITY.*—*The require-*
14 *ments of this section shall apply to any regulatory require-*
15 *ment described in subsection (a)(1) or guidance described*
16 *in subsection (a)(2) that is issued after the last day of the*
17 *1-year period beginning on the date of the enactment of this*
18 *section.*

19 “(g) *SIGNIFICANT REGULATORY ACTIONS AND GUID-*
20 *ANCE.*—

21 “(1) *APPLICABILITY OF REQUIREMENTS.*—*In ad-*
22 *dition to the regulatory requirements and guidance*
23 *referred to in subsection (f), the requirements of this*
24 *section shall apply to—*

1 “(A) any standard, effluent limitation,
2 water quality criterion, water quality based re-
3 quirement, or other regulatory requirement is-
4 sued under this Act during the period described
5 in paragraph (2) which is likely to result in an
6 annual increase in cost of \$100,000,000 or more;
7 and

8 “(B) any guidance issued under this Act
9 during the period described in paragraph (2)
10 which, if issued as a regulatory requirement,
11 would be likely to result in annual increase in
12 cost of \$100,000,000 or more.

13 “(2) COVERED PERIOD.—The period described in
14 this paragraph is the period beginning on February
15 15, 1995, and ending on the last day of the 1-year
16 period beginning on the date of the enactment of this
17 Act.

18 “(3) REVIEW.—Any regulatory requirement de-
19 scribed in paragraph (1)(A) or guidance described in
20 paragraph (1)(B) which was issued before the date of
21 the enactment of this section shall be reviewed and,
22 with respect to each such requirement or guidance, the
23 Administrator or the Secretary, as appropriate, shall
24 based on such review—

1 “(A) certify that the requirement or guid-
2 ance meets the requirements of this section with-
3 out revision; or

4 “(B) reissue the requirement or guidance,
5 after providing notice and opportunity for pub-
6 lic comment, with such revisions as may be nec-
7 essary for compliance with the requirements of
8 this section.

9 “(4) *DEADLINE.*—Any regulatory requirement
10 described in paragraph (1)(A) or guidance described
11 in paragraph (1)(B) for which the Administrator or
12 the Secretary, as appropriate, does not issue a certifi-
13 cation or revisions under paragraph (3) on or before
14 the last day of the 18-month period beginning on the
15 date of the enactment of this section shall cease to be
16 effective after such last day until the date on which
17 such certification or revisions are issued.”.

18 **SEC. 324. BENEFIT AND COST CRITERION.**

19 Title III (33 U.S.C. 1311–1330) is further amended
20 by adding at the end the following:

21 **“SEC. 324. BENEFIT AND COST CRITERION.**

22 “(a) *DECISION CRITERION.*—

23 “(1) *CERTIFICATION.*—The Administrator or the
24 Secretary of the Army (hereinafter in this section re-

1 ferred to as the ‘Secretary’), as appropriate, shall not
2 issue—

3 “(A) any standard, effluent limitation, or
4 other regulatory requirement under this Act; or

5 “(B) any guidance under this Act which, if
6 issued as a regulatory requirement, would result
7 in an annual increase in cost of \$25,000,000 or
8 more,

9 unless the Administrator or the Secretary certifies
10 that the requirement or guidance maximizes net bene-
11 fits to society. Such certification shall be based on an
12 analysis meeting the requirements of subsection (b).

13 “(2) *EFFECT OF CRITERION.*—Notwithstanding
14 any other provision of this Act, the decision criterion
15 of paragraph (1) shall supplement and, to the extent
16 there is a conflict, supersede the decision criteria oth-
17 erwise applicable under this Act; except that the re-
18 sulting regulatory requirement or guidance shall be
19 economically achievable.

20 “(3) *SUBSTANTIAL EVIDENCE.*—Notwithstanding
21 any other provision of this Act, no regulation or guid-
22 ance subject to this subsection shall be issued by the
23 Administrator or the Secretary unless the requirement
24 of paragraph (1) is met and the certification is sup-
25 ported by substantial evidence.

1 “(b) *BENEFIT AND COST ANALYSIS GUIDANCE.*—

2 “(1) *IN GENERAL.*—Not later than 180 days
3 after the date of the enactment of this section, and
4 after providing notice and opportunity for public
5 comment, the Administrator, in concurrence with the
6 Administrator of the Office of Information and Regu-
7 latory Affairs, shall issue, and thereafter revise, as
8 appropriate, guidance for conducting benefit and cost
9 analyses in support of making certifications required
10 by subsection (a).

11 “(2) *CONTENTS.*—Guidance issued under para-
12 graph (1), at a minimum, shall—

13 “(A) require the identification of available
14 policy alternatives, including the alternative of
15 not regulating and any alternatives proposed
16 during periods for public comment;

17 “(B) provide methods for estimating the in-
18 cremental benefits and costs associated with
19 plausible alternatives, including the use of quan-
20 titative and qualitative measures;

21 “(C) require an estimate of the nature and
22 extent of the incremental risk avoided by the
23 standard, effluent limitation, or other regulatory
24 requirement, including a statement that places

1 *in context the nature and magnitude of the esti-*
2 *mated risk reduction; and*

3 “(D) *require an estimate of the total social,*
4 *environmental, and economic costs of implement-*
5 *ing the standard, effluent limitation, or other*
6 *regulatory requirement.*

7 “(c) *EXEMPTIONS.—The following shall not be subject*
8 *to the requirements of this section:*

9 “(1) *The issuance of a permit.*

10 “(2) *The implementation of any purely proce-*
11 *dural requirement.*

12 “(3) *Water quality criteria established under sec-*
13 *tion 304.*

14 “(4) *Water quality based standards established*
15 *under section 303.*

16 “(d) *DISCRETIONARY EXEMPTIONS.—The Adminis-*
17 *trator or the Secretary, as appropriate, may exempt from*
18 *this section any regulatory requirement that is likely to re-*
19 *sult in an annual increase in costs of less than \$25,000,000.*
20 *Such exemptions may be made for specific regulatory re-*
21 *quirements or classes of regulatory requirements.*

22 “(e) *GENERAL RULE ON APPLICABILITY.—The re-*
23 *quirements of this section shall apply to any regulatory re-*
24 *quirement described in subsection (a)(1)(A) or guidance de-*
25 *scribed in subsection (a)(1)(B) that is issued after the last*

1 *day of the 1-year period beginning on the date of the enact-*
2 *ment of this section.*

3 “(f) *SIGNIFICANT REGULATORY ACTIONS AND GUID-*
4 *ANCE.*—

5 “(1) *APPLICABILITY OF REQUIREMENTS.*—*In ad-*
6 *dition to the regulatory requirements and guidance*
7 *referred to in subsection (e), this section shall apply*
8 *to—*

9 “(A) *any standard, effluent limitation, or*
10 *other regulatory requirement issued under this*
11 *Act during the period described in paragraph (2)*
12 *which is likely to result in an annual increase*
13 *in cost of \$100,000,000 or more; and*

14 “(B) *any guidance issued under this Act*
15 *during the period described in paragraph (2)*
16 *which, if issued as a regulatory requirement,*
17 *would be likely to result in annual increase in*
18 *cost of \$100,000,000 or more.*

19 “(2) *COVERED PERIOD.*—*The period described in*
20 *this paragraph is the period beginning on February*
21 *15, 1995, and ending on the last day of the 1-year*
22 *period beginning on the date of the enactment of this*
23 *Act.*

24 “(3) *REVIEW.*—*Any regulatory requirement de-*
25 *scribed in paragraph (1)(A) or guidance described in*

1 *paragraph (1)(B) which was issued before the date of*
2 *the enactment of this section shall be reviewed and,*
3 *with respect to each such requirement or guidance, the*
4 *Administrator or the Secretary, as appropriate, shall*
5 *based on such review—*

6 *“(A) certify that the requirement or guid-*
7 *ance meets the requirements of this section with-*
8 *out revision; or*

9 *“(B) reissue the requirement or guidance,*
10 *after providing notice and opportunity for pub-*
11 *lic comment, with such revisions as may be nec-*
12 *essary for compliance with the requirements of*
13 *this section.*

14 *“(4) DEADLINE.—Any regulatory requirement*
15 *described in paragraph (1)(A) or guidance described*
16 *in paragraph (1)(B) for which the Administrator or*
17 *the Secretary, as appropriate, does not issue a certifi-*
18 *cation or revisions under paragraph (3) on or before*
19 *the last day of the 18-month period beginning on the*
20 *date of the enactment of this section shall cease to be*
21 *effective after such last day until the date on which*
22 *such certification or revisions are issued.*

23 *“(g) STUDY.—Not later than 5 years after the date of*
24 *the enactment of this section, the Administrator, in con-*
25 *sultation with the Administrator of the Office of Informa-*

1 *tion and Regulatory Affairs, shall publish an analysis re-*
 2 *garding the precision and accuracy of benefit and cost esti-*
 3 *mates prepared under this section. Such study, at a mini-*
 4 *mum, shall—*

5 “(1) compare estimates of the benefits and costs
 6 prepared under this section to actual costs and bene-
 7 fits achieved after implementation of regulations or
 8 other requirements;

9 “(2) examine and assess alternative analytic
 10 methods for conducting benefit and cost analysis, in-
 11 cluding health-health analysis; and

12 “(3) make recommendations for the improvement
 13 of benefit and cost analyses conducted under this sec-
 14 tion.”.

15 **TITLE IV—PERMITS AND** 16 **LICENSES**

17 **SEC. 401. WASTE TREATMENT SYSTEMS FOR CON-** 18 **CENTRATED ANIMAL FEEDING OPERATIONS.**

19 *Section 402(a) is amended by adding the following*
 20 *new paragraph:*

21 “(6) **CONCENTRATED ANIMAL FEEDING OPER-**
 22 **ATIONS.**—*For purposes of this section, waste treat-*
 23 *ment systems, including retention ponds or lagoons,*
 24 *used to meet the requirements of this Act for con-*
 25 *centrated animal feeding operations, are not waters of*

1 *the United States. An existing concentrated animal*
2 *feeding operation that uses a natural topographic im-*
3 *poundment or structure on the effective date of this*
4 *Act, which is not hydrologically connected to any*
5 *other waters of the United States, as a waste treat-*
6 *ment system or wastewater retention facility may*
7 *continue to use that natural topographic feature for*
8 *waste storage regardless of its size, capacity, or pre-*
9 *vious use.”.*

10 **SEC. 402. PERMIT REFORM.**

11 *(a) DURATION AND REOPENERS.—Section 402(b)(1)*
12 *(33 U.S.C. 1342(b)(1)) is amended—*

13 *(1) in subparagraph (B) by striking “five” and*
14 *inserting “10” and by striking “and”;*

15 *(2) by inserting “and” after the semicolon at the*
16 *end of subparagraph (D); and*

17 *(3) by adding at the end the following new sub-*
18 *paragraph:*

19 *“(E) can be modified as necessary to ad-*
20 *dress a significant threat to human health and*
21 *the environment;”.*

22 *(b) REVIEW OF EFFLUENT LIMITATIONS.—Section*
23 *301(d) (33 U.S.C. 1311(d)) is amended to read as follows:*

24 *“(d) REVIEW OF EFFLUENT LIMITATIONS.—Any efflu-*
25 *ent limitation required by subsection (b)(2) that is estab-*

1 lished in a permit under section 402 shall be reviewed at
2 least every 10 years when the permit is reissued, and, if
3 appropriate, revised.”.

4 (c) *DISCHARGE LIMIT*.—Section 402(b)(1)(A) (33
5 U.S.C. 1342(b)(1)(A)) is amended by inserting after the
6 semicolon at the end the following: “except that in no event
7 shall a discharge limit in a permit under this section be
8 set at a level below the lowest level that the pollutant can
9 be reliably quantified on an interlaboratory basis for a par-
10 ticular test method, as determined by the Administrator
11 using approved analytical methods under section 304(h);”.

12 **SEC. 403. REVIEW OF STATE PROGRAMS AND PERMITS.**

13 (a) *REVIEW OF STATE PROGRAMS*.—Section 402(c)
14 (33 U.S.C. 1342(c)) is amended by inserting before the first
15 sentence the following: “Upon approval of a State program
16 under this section, the Administrator shall review adminis-
17 tration of the program by the State once every 3 years.”.

18 (b) *REVIEW OF STATE PERMITS*.—Section 402(d)(2)
19 (33 U.S.C. 1342(d)(2)) is amended—

20 (1) in the first sentence by striking “as being
21 outside the guidelines and requirements of this Act”
22 and inserting “as presenting a substantial risk to
23 human health and the environment”; and

1 (2) *in the second sentence by striking “and the*
2 *effluent limitations” and all that follows before the*
3 *period.*

4 (c) *COURT PROCEEDINGS TO PROHIBIT INTRODUCTION*
5 *OF POLLUTANTS INTO TREATMENT WORKS.—Section*
6 *402(h) (33 U.S.C. 1342(h)) is amended by inserting after*
7 *“approved or where” the following: “the discharge involves*
8 *a significant source of pollutants to the waters of the United*
9 *States and”.*

10 **SEC. 404. STATISTICAL NONCOMPLIANCE.**

11 (a) *NUMBER OF EXCURSIONS.—Section 402(k) (33*
12 *U.S.C. 1342(k)) is amended by inserting after the first sen-*
13 *tence the following: “In any enforcement action or citizen*
14 *suit under section 309 or 505 of this Act or applicable State*
15 *law alleging noncompliance with a technology-based efflu-*
16 *ent limitation established pursuant to section 301, a per-*
17 *mittee shall be deemed in compliance with the technology-*
18 *based effluent limitation if the permittee demonstrates*
19 *through reference to information contained in the applica-*
20 *ble rulemaking record that the number of excursions from*
21 *the technology-based effluent limitation are no greater, on*
22 *an annual basis, than the number of excursions expected*
23 *from the technology on which the limit is based and that*
24 *the discharges do not violate an applicable water-quality*
25 *based limitation or standard.”.*

1 (b) *PRETREATMENT STANDARDS.*—Section 307(d) (33
2 U.S.C. 1317(d)) is amended by adding at the end the follow-
3 ing: “In any enforcement action or citizen suit under sec-
4 tion 309 or 505 of this Act or applicable State law alleging
5 noncompliance with a categorical pretreatment standard or
6 local pretreatment limit established pursuant to this sec-
7 tion, a person who demonstrates through reference to infor-
8 mation contained in the applicable rulemaking record—

9 “(1) that the number of excursions from the cat-
10 egorical pretreatment standard or local pretreatment
11 limit are no greater, on an annual basis, than the
12 number of excursions expected from the technology on
13 which the pretreatment standard or local
14 pretreatment limit is based, and

15 “(2) that the introduction of pollutants into a
16 publicly owned treatment works does not cause inter-
17 ference with such works or cause a violation by such
18 works of an applicable water-quality based limitation
19 or standard,

20 shall be deemed in compliance with the standard under the
21 Act.”.

22 **SEC. 405. ANTI-BACKSLIDING REQUIREMENTS.**

23 Section 402(o) (33 U.S.C. 1343(o)) is amended by add-
24 ing at the end the following:

1 “(4) *NONAPPLICABILITY TO PUBLICLY OWNED*
2 *TREATMENT WORKS.*—The requirements of this sub-
3 section shall not apply to permitted discharges from
4 a publicly owned treatment works if the treatment
5 works demonstrates to the satisfaction of the Adminis-
6 trator that—

7 “(A) *the increase in pollutants is a result of*
8 *conditions beyond the control of the treatment*
9 *works (such as fluctuations in normal source*
10 *water availabilities due to sustained drought*
11 *conditions); and*

12 “(B) *effluent quality does not result in im-*
13 *pairment of water quality standards established*
14 *for the receiving waters.”.*

15 **SEC. 406. INTAKE CREDITS.**

16 Section 402 (33 U.S.C. 1342) is further amended by
17 inserting after subsection (k) the following:

18 “(l) *INTAKE CREDITS.*—

19 “(1) *IN GENERAL.*—Notwithstanding any provi-
20 sion of this Act, in any effluent limitation or other
21 limitation imposed under the permit program estab-
22 lished by the Administrator under this section, any
23 State permit program approved under this section
24 (including any program for implementation under
25 section 118(c)(2)), any standards established under

1 *section 307(a), or any program for industrial users*
2 *established under section 307(b), the Administrator,*
3 *as applicable, shall or the State, as applicable, may*
4 *provide credits for pollutants present in or caused by*
5 *intake water such that an owner or operator of a*
6 *point source is not required to remove, reduce, or*
7 *treat the amount of any pollutant in an effluent*
8 *below the amount of such pollutant that is present in*
9 *or caused by the intake water for such facility—*

10 *“(A)(i) if the source of the intake water and*
11 *the receiving waters into which the effluent is ul-*
12 *timately discharged are the same;*

13 *“(ii) if the source of the intake water meets*
14 *the maximum contaminant levels or treatment*
15 *techniques for drinking water contaminants es-*
16 *tablished pursuant to the Safe Drinking Water*
17 *Act for the pollutant of concern; or*

18 *“(iii) if, at the time the limitation or stand-*
19 *ard is established, the level of the pollutant in the*
20 *intake water is the same as or lower than the*
21 *amount of the pollutant in the receiving waters,*
22 *taking into account analytical variability; and*

23 *“(B) if, for conventional pollutants, the con-*
24 *stituents of the conventional pollutants in the in-*

1 *take water are the same as the constituents of the*
2 *conventional pollutants in the effluent.*

3 “(2) *ALLOWANCE FOR INCIDENTAL AMOUNTS.*—
4 *In determining whether the condition set forth in*
5 *paragraph (1)(A)(i) is being met, the Administrator*
6 *shall or the State may, as appropriate, make allow-*
7 *ance for incidental amounts of intake water from*
8 *sources other than the receiving waters.*

9 “(3) *CREDIT FOR NONQUALIFYING POLLUT-*
10 *ANTS.*—*The Administrator shall or a State may pro-*
11 *vide point sources an appropriate credit for pollut-*
12 *ants found in intake water that does not meet the re-*
13 *quirement of paragraph (1).*

14 “(4) *MONITORING.*—*Nothing in this section pre-*
15 *cludes the Administrator or a State from requiring*
16 *monitoring of intake water, effluent, or receiving wa-*
17 *ters to assist in the implementation of this section.”.*

18 **SEC. 407. COMBINED SEWER OVERFLOWS.**

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

21 “(s) *COMBINED SEWER OVERFLOWS.*—

22 “(1) *REQUIREMENT FOR PERMITS.*—*Each permit*
23 *issued pursuant to this section for a discharge from*
24 *a combined storm and sanitary sewer shall conform*

1 *with the combined sewer overflow control policy*
2 *signed by the Administrator on April 11, 1994.*

3 *“(2) TERM OF PERMIT.—*

4 *“(A) COMPLIANCE DEADLINE.—Notwith-*
5 *standing any compliance schedule under section*
6 *301(b), or any permit limitation under section*
7 *402(b)(1)(B), the Administrator (or a State with*
8 *a program approved under subsection (b)) may*
9 *issue a permit pursuant to this section for a dis-*
10 *charge from a combined storm and sanitary*
11 *sewer, that includes a schedule for compliance*
12 *with a long-term control plan under the control*
13 *policy referred to in paragraph (1), for a term*
14 *not to exceed 15 years.*

15 *“(B) EXTENSION.—Notwithstanding the*
16 *compliance deadline specified in subparagraph*
17 *(A), the Administrator or a State with a pro-*
18 *gram approved under subsection (b) shall extend,*
19 *on request of an owner or operator of a combined*
20 *storm and sanitary sewer and subject to sub-*
21 *paragraph (C), the period of compliance beyond*
22 *the last day of the 15-year period—*

23 *“(i) if the Administrator or the State*
24 *determines that compliance by such last day*

1 *is not within the economic capability of the*
2 *owner or operator; and*

3 *“(ii) if the owner or operator dem-*
4 *onstrates to the satisfaction of the Adminis-*
5 *trator or the State reasonable further*
6 *progress towards compliance with a long-*
7 *term control plan under the control policy*
8 *referred to in paragraph (1).*

9 *“(C) LIMITATIONS ON EXTENSIONS.—*

10 *“(i) EXTENSION NOT APPROPRIATE.—*
11 *Notwithstanding subparagraph (B), the Ad-*
12 *ministrator or the State need not grant an*
13 *extension of the compliance deadline speci-*
14 *fied in subparagraph (A) if the Adminis-*
15 *trator or the State determines that such an*
16 *extension is not appropriate.*

17 *“(ii) NEW YORK-NEW JERSEY.—Prior*
18 *to granting an extension under subpara-*
19 *graph (B) with respect to a combined sewer*
20 *overflow discharge originating in the State*
21 *of New York or New Jersey and affecting*
22 *the other of such States, the Administrator*
23 *or the State from which the discharge origi-*
24 *nates, as the case may be, shall provide*
25 *written notice of the proposed extension to*

1 *the other State and shall not grant the ex-*
2 *ension unless the other State approves the*
3 *extension or does not disapprove the exten-*
4 *sion within 90 days of receiving such writ-*
5 *ten notice.*

6 “(3) *SAVINGS CLAUSE.*—*Any consent decree or*
7 *court order entered by a United States district court,*
8 *or administrative order issued by the Administrator,*
9 *before the date of the enactment of this subsection es-*
10 *tablishing any deadlines, schedules, or timetables, in-*
11 *cluding any interim deadlines, schedules, or time-*
12 *tables, for the evaluation, design, or construction of*
13 *treatment works for control or elimination of any dis-*
14 *charge from a municipal combined storm and sani-*
15 *tary sewer system shall be modified upon motion or*
16 *request by any party to such consent decree or court*
17 *order, to extend to December 31, 2009, at a mini-*
18 *mum, any such deadlines, schedules, or timetables, in-*
19 *cluding any interim deadlines, schedules, or time-*
20 *tables as is necessary to conform to the policy referred*
21 *to in paragraph (1) or otherwise achieve the objectives*
22 *of this subsection. Notwithstanding the preceding sen-*
23 *tence, the period of compliance with respect to a dis-*
24 *charge referred to in paragraph (2)(C)(ii) may only*

1 *be extended in accordance with paragraph*
2 *(2)(C)(ii).”.*

3 **SEC. 408. SANITARY SEWER OVERFLOWS.**

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

6 *“(t) SANITARY SEWER OVERFLOWS.—*

7 *“(1) DEVELOPMENT OF POLICY.—Not later than*
8 *2 years after the date of the enactment of this sub-*
9 *section, the Administrator, in consultation with State*
10 *and local governments and water authorities, shall*
11 *develop and publish a national control policy for mu-*
12 *nicipal separate sanitary sewer overflows. The na-*
13 *tional policy shall recognize and address regional and*
14 *economic factors.*

15 *“(2) ISSUANCE OF PERMITS.—Each permit is-*
16 *ssued pursuant to this section for a discharge from a*
17 *municipal separate sanitary sewer shall conform with*
18 *the policy developed under paragraph (1).*

19 *“(3) COMPLIANCE DEADLINE.—Notwithstanding*
20 *any compliance schedule under section 301(b), or any*
21 *permit limitation under subsection (b)(1)(B), the Ad-*
22 *ministrator or a State with a program approved*
23 *under subsection (b) may issue a permit pursuant to*
24 *this section for a discharge from a municipal separate*
25 *sanitary sewer due to stormwater inflows or infiltra-*

1 *tion. The permit shall include at a minimum a sched-*
2 *ule for compliance with a long-term control plan*
3 *under the policy developed under paragraph (1), for*
4 *a term not to exceed 15 years.*

5 *“(4) EXTENSION.—Notwithstanding the compli-*
6 *ance deadline specified in paragraph (3), the Admin-*
7 *istrator or a State with a program approved under*
8 *subsection (b) shall extend, on request of an owner or*
9 *operator of a municipal separate sanitary sewer, the*
10 *period of compliance beyond the last day of such 15-*
11 *year period if the Administrator or the State deter-*
12 *mines that compliance by such last day is not within*
13 *the economic capability of the owner or operator, un-*
14 *less the Administrator or the State determines that*
15 *the extension is not appropriate.*

16 *“(5) EFFECT ON OTHER ACTIONS.—Before the*
17 *date of publication of the policy under paragraph (1),*
18 *the Administrator or Attorney General shall not initi-*
19 *ate any administrative or judicial civil penalty ac-*
20 *tion in response to a municipal separate sanitary*
21 *sewer overflow due to stormwater inflows or infiltra-*
22 *tion.*

23 *“(6) SAVINGS CLAUSE.—Any consent decree or*
24 *court order entered by a United States district court,*
25 *or administrative order issued by the Administrator,*

1 *before the date of the enactment of this subsection es-*
2 *tablishing any deadlines, schedules, or timetables, in-*
3 *cluding any interim deadlines, schedules, or time-*
4 *tables, for the evaluation, design, or construction of*
5 *treatment works for control or elimination of any dis-*
6 *charge from a municipal separate sanitary sewer*
7 *shall be modified upon motion or request by any*
8 *party to such consent decree or court order, to extend*
9 *to December 31, 2009, at a minimum, any such dead-*
10 *lines, schedules, or timetables, including any interim*
11 *deadlines, schedules, or timetables as is necessary to*
12 *conform to the policy developed under paragraph (1)*
13 *or otherwise achieve the objectives of this subsection.”.*

14 **SEC. 409. ABANDONED MINES.**

15 *Section 402 (33 U.S.C. 1342) is further amended by*
16 *inserting after subsection (o) the following:*

17 “(p) *PERMITS FOR REMEDIATING PARTY ON ABAN-*
18 *DONED OR INACTIVE MINED LANDS.—*

19 “(1) *APPLICABILITY.—Subject to this subsection,*
20 *including the requirements of paragraph (3), the Ad-*
21 *ministrator, with the concurrence of the concerned*
22 *State or Indian tribe, may issue a permit to a reme-*
23 *diating party under this section for discharges associ-*
24 *ated with remediation activity at abandoned or inac-*
25 *tive mined lands which modifies any otherwise appli-*

1 *cable requirement of sections 301(b), 302, and 403, or*
2 *any subsection of this section (other than this sub-*
3 *section).*

4 “(2) *APPLICATION FOR A PERMIT.*—A *remediat-*
5 *ing party who desires to conduct remediation activi-*
6 *ties on abandoned or inactive mined lands from*
7 *which there is or may be a discharge of pollutants to*
8 *waters of the United States or from which there could*
9 *be a significant addition of pollutants from nonpoint*
10 *sources may submit an application to the Adminis-*
11 *trator. The application shall consist of a remediation*
12 *plan and any other information requested by the Ad-*
13 *ministrator to clarify the plan and activities.*

14 “(3) *REMEDICATION PLAN.*—The *remediation*
15 *plan shall include (as appropriate and applicable)*
16 *the following:*

17 “(A) *Identification of the remediating*
18 *party, including any persons cooperating with*
19 *the concerned State or Indian tribe with respect*
20 *to the plan, and a certification that the appli-*
21 *cant is a remediating party under this section.*

22 “(B) *Identification of the abandoned or in-*
23 *active mined lands addressed by the plan.*

1 “(C) Identification of the waters of the
2 United States impacted by the abandoned or in-
3 active mined lands.

4 “(D) A description of the physical condi-
5 tions at the abandoned or inactive mined lands
6 that are causing adverse water quality impacts.

7 “(E) A description of practices, including
8 system design and construction plans and oper-
9 ation and maintenance plans, proposed to re-
10 duce, control, mitigate, or eliminate the adverse
11 water quality impacts and a schedule for imple-
12 menting such practices and, if it is an existing
13 remediation project, a description of practices
14 proposed to improve the project, if any.

15 “(F) An analysis demonstrating that the
16 identified practices are expected to result in a
17 water quality improvement for the identified wa-
18 ters.

19 “(G) A description of monitoring or other
20 assessment to be undertaken to evaluate the suc-
21 cess of the practices during and after implemen-
22 tation, including an assessment of baseline con-
23 ditions.

1 “(H) A schedule for periodic reporting on
2 progress in implementation of major elements of
3 the plan.

4 “(I) A budget and identified funding to
5 support the activities described in the plan.

6 “(J) Remediation goals and objectives.

7 “(K) Contingency plans.

8 “(L) A description of the applicant’s legal
9 right to enter and conduct activities.

10 “(M) The signature of the applicant.

11 “(N) Identification of the pollutant or pol-
12 lutants to be addressed by the plan.

13 “(4) PERMITS.—

14 “(A) CONTENTS.—Permits issued by the
15 Administrator pursuant to this subsection
16 shall—

17 “(i) provide for compliance with and
18 implementation of a remediation plan
19 which, following issuance of the permit,
20 may be modified by the applicant after pro-
21 viding notification to and opportunity for
22 review by the Administrator;

23 “(ii) require that any modification of
24 the plan be reflected in a modified permit;

1 “(iii) require that if, at any time after
2 notice to the remediating party and oppor-
3 tunity for comment by the remediating
4 party, the Administrator determines that
5 the remediating party is not implementing
6 the approved remediation plan in substan-
7 tial compliance with its terms, the Adminis-
8 trator shall notify the remediating party of
9 the determination together with a list speci-
10 fying the concerns of the Administrator;

11 “(iv) provide that, if the identified
12 concerns are not resolved or a compliance
13 plan approved within 180 days of the date
14 of the notification, the Administrator may
15 take action under section 309 of this Act;

16 “(v) provide that clauses (iii) and (iv)
17 not apply in the case of any action under
18 section 309 to address violations involving
19 gross negligence (including reckless, willful,
20 or wanton misconduct) or intentional mis-
21 conduct by the remediating party or any
22 other person;

23 “(vi) not require compliance with any
24 limitation issued under sections 301(b),
25 302, and 403 or any requirement estab-

1 *lished by the Administrator under any sub-*
2 *section of this section (other than this sub-*
3 *section); and*

4 *“(vii) provide for termination of cov-*
5 *erage under the permit without the remedi-*
6 *ating party being subject to enforcement*
7 *under sections 309 and 505 of this Act for*
8 *any remaining discharges—*

9 *“(I) after implementation of the*
10 *remediation plan;*

11 *“(II) if a party obtains a permit*
12 *to mine the site; or*

13 *“(III) upon a demonstration by*
14 *the remediating party that the surface*
15 *water quality conditions due to reme-*
16 *diation activities at the site, taken as*
17 *a whole, are equal to or superior to the*
18 *surface water qualities that existed*
19 *prior to initiation of remediation.*

20 *“(B) LIMITATIONS.—The Administrator*
21 *shall only issue a permit under this section, con-*
22 *sistent with the provisions of this subsection, to*
23 *a remediating party for discharges associated*
24 *with remediation action at abandoned or inac-*
25 *tive mined lands if the remediation plan dem-*

1 *onstrates with reasonable certainty that the ac-*
2 *tions will result in an improvement in water*
3 *quality.*

4 “(C) *PUBLIC PARTICIPATION.*—*The Admin-*
5 *istrator may only issue a permit or modify a*
6 *permit under this section after complying with*
7 *subsection (b)(3).*

8 “(D) *EFFECT OF FAILURE TO COMPLY WITH*
9 *PERMIT.*—*Failure to comply with terms of a per-*
10 *mit issued pursuant to this subsection shall not*
11 *be deemed to be a violation of an effluent stand-*
12 *ard or limitation issued under this Act.*

13 “(E) *LIMITATIONS ON STATUTORY CON-*
14 *STRUCTION.*—*This subsection shall not be con-*
15 *strued—*

16 “(i) *to limit or otherwise affect the Ad-*
17 *ministrator’s powers under section 504; or*

18 “(ii) *to preclude actions pursuant to*
19 *section 309 or 505 for any violations of sec-*
20 *tions 301(a), 302, 402, and 403 that may*
21 *have existed for the abandoned or inactive*
22 *mined land prior to initiation of remedi-*
23 *ation covered by a permit issued under this*
24 *subsection, unless such permit covers reme-*

1 *diation activities implemented by the per-*
2 *mit holder prior to issuance of the permit.*

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

5 “(A) *REMEDIATING PARTY.*—*The term ‘re-*
6 *mediating party’ means—*

7 “(i) *the United States (on non-Federal*
8 *lands), a State or its political subdivisions,*
9 *or an Indian tribe or officers, employees, or*
10 *contractors thereof; and*

11 “(ii) *any person acting in cooperation*
12 *with a person described in clause (i), in-*
13 *cluding a government agency that owns*
14 *abandoned or inactive mined lands for the*
15 *purpose of conducting remediation of the*
16 *mined lands or that is engaging in remedi-*
17 *ation activities incidental to the ownership*
18 *of the lands.*

19 *Such term does not include any person who, be-*
20 *fore or following issuance of a permit under this*
21 *section, directly benefited from or participated in*
22 *any mining operation (including exploration)*
23 *associated with the abandoned or inactive mined*
24 *lands.*

1 “(B) *ABANDONED OR INACTIVE MINED*
2 *LANDS.*—*The term ‘abandoned or inactive mined*
3 *lands’ means lands that were formerly mined*
4 *and are not actively mined or in temporary*
5 *shutdown at the time of submission of the reme-*
6 *diation plan and issuance of a permit under this*
7 *section.*

8 “(C) *MINED LANDS.*—*The term ‘mined*
9 *lands’ means the surface or subsurface of an area*
10 *where mining operations, including exploration,*
11 *extraction, processing, and beneficiation, have*
12 *been conducted. Such term includes private ways*
13 *and roads appurtenant to such area, land exca-*
14 *vations, underground mine portals, adits, and*
15 *surface expressions associated with underground*
16 *workings, such as glory holes and subsidence fea-*
17 *tures, mining waste, smelting sites associated*
18 *with other mined lands, and areas where struc-*
19 *tures, facilities, equipment, machines, tools, or*
20 *other material or property which result from or*
21 *have been used in the mining operation are lo-*
22 *cated.*

23 “(6) *REGULATIONS.*—*The Administrator may*
24 *issue regulations establishing more specific require-*
25 *ments that the Administrator determines would facili-*

1 *tate implementation of this subsection. Before issu-*
2 *ance of such regulations, the Administrator may es-*
3 *tablish, on a case-by-case basis after notice and op-*
4 *portunity for public comment as provided by sub-*
5 *section (b)(3), more specific requirements that the Ad-*
6 *ministrator determines would facilitate implementa-*
7 *tion of this subsection in an individual permit issued*
8 *to the remediating party.”.*

9 **SEC. 410. BENEFICIAL USE OF BIOSOLIDS.**

10 (a) *REFERENCES.*—Section 405(a) (33 U.S.C.
11 1345(a)) is amended by inserting “(also referred to as
12 ‘biosolids’)” after “sewage sludge” the first place it appears.

13 (b) *APPROVAL OF STATE PROGRAMS.*—Section 405(f)
14 (33 U.S.C. 1345(f)) is amended by adding at the end the
15 following:

16 “(3) *APPROVAL OF STATE PROGRAMS.*—Notwith-
17 *standing any other provision of law, the Adminis-*
18 *trator shall approve for purposes of this subsection*
19 *State programs that meet the standards for final use*
20 *or disposal of sewage sludge established by the Admin-*
21 *istrator pursuant to subsection (d).”.*

22 (c) *STUDIES AND PROJECTS.*—Section 405(g) (33
23 U.S.C. 1345(g)) is amended—

1 (1) in the first sentence of paragraph (1) by in-
2 serting “building materials,” after “agricultural and
3 horticultural uses,”;

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

9 (3) in paragraph (2) by striking “September 30,
10 1986,” and inserting “September 30, 1995,”.

11 **SEC. 411. WASTE TREATMENT SYSTEMS DEFINED.**

12 Title IV (33 U.S.C. 1341–1345) is further amended by
13 adding at the end the following:

14 **“SEC. 406. WASTE TREATMENT SYSTEMS DEFINED.**

15 “(a) *ISSUANCE OF REGULATIONS.*—Not later than 1
16 year of the date of the enactment of this section, the Admin-
17 istrator, after consultation with State officials, shall issue
18 a regulation defining ‘waste treatment systems’.

19 “(b) *INCLUSION OF AREAS.*—

20 “(1) *AREAS WHICH MAY BE INCLUDED.*—In de-
21 fining the term ‘waste treatment systems’ under sub-
22 section (a), the Administrator may include areas used
23 for the treatment of wastes if the Administrator deter-
24 mines that such inclusion will not interfere with the
25 goals of this Act.

1 “(2) *AREAS WHICH SHALL BE INCLUDED.*—In
2 *defining the term ‘waste treatment systems’ under*
3 *subsection (a), the Administrator shall include, at a*
4 *minimum, areas used for detention, retention, treat-*
5 *ment, settling, conveyance, or evaporation of*
6 *wastewater, stormwater, or cooling water unless—*

7 “(A) *the area was created in or resulted*
8 *from the impoundment or other modification of*
9 *navigable waters and construction of the area*
10 *commenced after the date of the enactment of this*
11 *section;*

12 “(B) *on or after February 15, 1995, the*
13 *owner or operator allows the area to be used by*
14 *interstate or foreign travelers for recreational*
15 *purposes; or*

16 “(C) *on or after February 15, 1995, the*
17 *owner or operator allows the taking of fish or*
18 *shellfish from the area for sale in interstate or*
19 *foreign commerce.*

20 “(c) *INTERIM PERIOD.*—*Before the date of issuance of*
21 *regulations under subsection (a), the Administrator or the*
22 *State (in the case of a State with an approved permit pro-*
23 *gram under section 402) shall not require a new permit*
24 *under section 402 or section 404 for any discharge into any*
25 *area used for detention, retention, treatment, settling, con-*

1 *veyance, or evaporation of wastewater, stormwater, or cool-*
2 *ing water unless the area is an area described in subsection*
3 *(b)(2)(A), (b)(2)(B), or (b)(2)(C).*

4 “(d) *SAVINGS CLAUSE.*—Any area which the Adminis-
5 *trator or the State (in the case of a State with an approved*
6 *permit program under section 402) determined, before Feb-*
7 *ruary 15, 1995, is a water of the United States and for*
8 *which, pursuant to such determination, the Administrator*
9 *or State issued, before February 15, 1995, a permit under*
10 *section 402 for discharges into such area shall remain a*
11 *water of the United States.*

12 “(e) *REGULATION OF OTHER AREAS.*—With respect to
13 *areas constructed for detention, retention, treatment, set-*
14 *ting, conveyance, or evaporation of wastewater,*
15 *stormwater, or cooling water that are not waste treatment*
16 *systems as defined by the Administrator pursuant to this*
17 *section and that the Administrator determines are navi-*
18 *gable waters under this Act, the Administrator or the*
19 *States, in establishing standards pursuant to section 303(c)*
20 *of this Act or implementing other requirements of this Act,*
21 *shall give due consideration to the uses for which such areas*
22 *were designed and constructed, and need not establish*
23 *standards or other requirements that will impede such*
24 *uses.”.*

1 **SEC. 412. THERMAL DISCHARGES.**

2 *A municipal utility that before the date of the enact-*
3 *ment of this section has been issued a permit under section*
4 *402 of the Federal Water Pollution Control Act for dis-*
5 *charges into the Upper Greater Miami River, Ohio, shall*
6 *not be required under such Act to construct a cooling tower*
7 *or operate under a thermal management plan unless—*

8 *(1) the Administrator or the State of Ohio deter-*
9 *mines based on scientific evidence that such dis-*
10 *charges result in harm to aquatic life; or*

11 *(2) the municipal utility has applied for and*
12 *been denied a thermal discharge variance under sec-*
13 *tion 316(a) of such Act.*

14 **TITLE V—GENERAL PROVISIONS**

15 **SEC. 501. CONSULTATION WITH STATES.**

16 *Section 501 (33 U.S.C. 1361) is amended by adding*
17 *at the end the following new subsection:*

18 *“(g) CONSULTATION WITH STATES.—*

19 *“(1) IN GENERAL.—The Administrator shall con-*
20 *sult with and substantially involve State governments*
21 *and their representative organizations and, to the ex-*
22 *tent that they participate in the administration of*
23 *this Act, tribal and local governments, in the Envi-*
24 *ronmental Protection Agency’s decisionmaking, prior-*
25 *ity setting, policy and guidance development, and im-*
26 *plementation under this Act.*

1 “(2) *INAPPLICABILITY OF FEDERAL ADVISORY*
2 *COMMITTEE ACT.—The Federal Advisory Committee*
3 *Act (5 U.S.C. App.) shall not apply to meetings held*
4 *to carry out paragraph (1)—*

5 “(A) *if such meetings are held exclusively*
6 *between Federal officials and elected officers of*
7 *State, local, and tribal governments (or their*
8 *designated employees with authority to act on*
9 *their behalf) acting in their official capacities;*
10 *and*

11 “(B) *if such meetings are solely for the pur-*
12 *poses of exchanging views, information, or advice*
13 *relating to the management or implementation*
14 *of this Act.*

15 “(3) *IMPLEMENTING GUIDELINES.—No later*
16 *than 6 months after the date of the enactment of this*
17 *paragraph, the Administrator shall issue guidelines*
18 *for appropriate implementation of this subsection*
19 *consistent with applicable laws and regulations.”.*

20 **SEC. 502. NAVIGABLE WATERS DEFINED.**

21 *Section 502(7) (33 U.S.C. 1362(7)) is amended by*
22 *adding at the end the following: “Such term does not in-*
23 *clude ‘waste treatment systems’, as defined under section*
24 *406.”.*

1 **SEC. 503. CAFO DEFINITION CLARIFICATION.**

2 *Section 502(14) (33 U.S.C. 1362(14)) is further*
3 *amended—*

4 *(1) by inserting “(other than an intermittent*
5 *nonproducing livestock operation such as a stockyard*
6 *or a holding and sorting facility)” after “feeding op-*
7 *eration”;* and

8 *(2) by adding at the end the following: “The*
9 *term does include an intermittent nonproducing live-*
10 *stock operation if the average number of animal units*
11 *that are fed or maintained in any 90-day period ex-*
12 *ceeds the number of animal units determined by the*
13 *Administrator or the State (in the case of a State*
14 *with an approved permit program under section 402)*
15 *to constitute a concentrated animal feeding operation*
16 *or if the operation is designated by the Administrator*
17 *or State as a significant contributor of pollution.”.*

18 **SEC. 504. PUBLICLY OWNED TREATMENT WORKS DEFINED.**

19 *Section 502 (33 U.S.C. 1362) is further amended by*
20 *adding at the end the following:*

21 *“(27) The term ‘publicly owned treatment works’*
22 *means a treatment works, as defined in section 212, located*
23 *at other than an industrial facility, which is designed and*
24 *constructed principally, as determined by the Adminis-*
25 *trator, to treat domestic sewage or a mixture of domestic*
26 *sewage and industrial wastes of a liquid nature. In the case*

1 *of such a facility that is privately owned, such term in-*
2 *cludes only those facilities that, with respect to such indus-*
3 *trial wastes, are carrying out a pretreatment program*
4 *meeting all the requirements established under section 307*
5 *and paragraphs (8) and (9) of section 402(b) for*
6 *pretreatment programs (whether or not the treatment works*
7 *would be required to implement a pretreatment program*
8 *pursuant to such sections).”.*

9 **SEC. 505. STATE WATER QUANTITY RIGHTS.**

10 (a) *POLICY.*—Section 101(g) (33 U.S.C. 1251(g)) is
11 amended by inserting before the period at the end of the
12 last sentence “and in accordance with section 510(b) of this
13 Act”.

14 (b) *STATE AUTHORITY.*—Section 510 (33 U.S.C. 1370)
15 is amended—

16 (1) by striking the section heading and “*SEC.*
17 *510. Except*” and inserting the following:

18 **“SEC. 510. STATE AUTHORITY.**

19 “(a) *IN GENERAL.*—*Except*”; and

20 (2) by adding at the end the following new sub-
21 section:

22 “(b) *WATER RIGHTS.*—*Nothing in this Act shall be*
23 *construed to supersede, abrogate, or otherwise impair any*
24 *right or authority of a State to allocate quantities of water*
25 *(including boundary waters). Nothing in this Act shall be*

1 *implemented, enforced, or construed to allow any officer or*
2 *agency of the United States to utilize directly or indirectly*
3 *the authorities established under this Act to impose any re-*
4 *quirement not imposed by the State which would supersede,*
5 *abrogate, or otherwise impair rights to the use of water re-*
6 *sources allocated under State law, interstate water compact,*
7 *or Supreme Court decree, or held by the United States for*
8 *use by a State, its political subdivisions, or its citizens. No*
9 *water rights arise in the United States or any other person*
10 *under the provisions of this Act. This subsection shall not*
11 *be construed as limiting any State's authority under section*
12 *401 of this Act, as excusing any person from obtaining a*
13 *permit under section 402 or 404 of this Act, or as excusing*
14 *any obligation to comply with requirements established by*
15 *a State to implement section 319."*

16 **SEC. 506. IMPLEMENTATION OF WATER POLLUTION LAWS**
17 **WITH RESPECT TO VEGETABLE OIL.**

18 (a) *DIFFERENTIATION AMONG FATS, OILS, AND*
19 *GREASES.—*

20 (1) *IN GENERAL.—In issuing or enforcing a reg-*
21 *ulation, an interpretation, or a guideline relating to*
22 *a fat, oil, or grease under a Federal law related to*
23 *water pollution control, the head of a Federal agency*
24 *shall—*

1 (A) differentiate between and establish separate classes for—
2

3 (i)(I) animal fats; and

4 (II) vegetable oils; and

5 (ii) other oils, including petroleum oil;

6 and

7 (B) apply different standards and reporting
8 requirements (including reporting requirements
9 based on quantitative amounts) to different
10 classes of fat and oil as provided in paragraph
11 (2).

12 (2) CONSIDERATIONS.—In differentiating between the classes of animal fats and vegetable oils referred to in paragraph (1)(A)(i) and the classes of oils described in paragraph (1)(A)(ii), the head of the Federal agency shall consider differences in physical, chemical, biological, and other properties, and in the environmental effects, of the classes.

19 (b) DEFINITIONS.—In this section, the following definitions apply:
20

21 (1) ANIMAL FAT.—The term “animal fat” means
22 each type of animal fat, oil, or grease, including fat,
23 oil, or grease from fish or a marine mammal and any
24 fat, oil, or grease referred to in section 61(a)(2) of
25 title 13, United States Code.

1 (2) *VEGETABLE OIL.*—The term “vegetable oil”
2 means each type of vegetable oil, including vegetable
3 oil from a seed, nut, or kernel and any vegetable oil
4 referred to in section 61(a)(1) of title 13, United
5 States Code.

6 **SEC. 507. NEEDS ESTIMATE.**

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

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

11 (2) in the second sentence by striking “February
12 10 of each odd-numbered year” and inserting “De-
13 cember 31, 1997, and December 31 of every 4th cal-
14 endar year thereafter”.

15 **SEC. 508. GENERAL PROGRAM AUTHORIZATIONS.**

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

17 (1) by striking “and” before “\$135,000,000”;
18 and

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

22 **SEC. 509. INDIAN TRIBES.**

23 (a) *COOPERATIVE AGREEMENTS.*—Section 518(d) (33
24 U.S.C. 1377(d)) is amended by adding at the end the follow-
25 ing: “In exercising the review and approval provided in

1 *this paragraph, the Administrator shall respect the terms*
2 *of any cooperative agreement that addresses the authority*
3 *or responsibility of a State or Indian tribe to administer*
4 *the requirements of this Act within the exterior boundaries*
5 *of a Federal Indian reservation, so long as that agreement*
6 *otherwise provides for the adequate administration of this*
7 *Act.”.*

8 (b) *DISPUTE RESOLUTION.—Section 518 is amend-*
9 *ed—*

10 (1) *by redesignating subsection (h) as subsection*
11 *(j); and*

12 (2) *by inserting after subsection (g) the following*
13 *new subsection:*

14 “(h) *DISPUTE RESOLUTION.—The Administrator shall*
15 *promulgate, in consultation with States and Indian tribes,*
16 *regulations which provide for the resolution of any unrea-*
17 *sonable consequences that may arise as a result of differing*
18 *water quality standards that may be set by States and In-*
19 *dian tribes located on common bodies of water. Such mecha-*
20 *nism shall provide, in a manner consistent with the objec-*
21 *tives of this Act, that persons who are affected by differing*
22 *tribal or State water quality permit requirements have*
23 *standing to utilize the dispute resolution process, and for*
24 *the explicit consideration of relevant factors, including the*
25 *effects of differing water quality permit requirements on up-*

1 *stream and downstream dischargers, economic impacts, and*
2 *present and historical uses and quality of the waters subject*
3 *to such standards.”.*

4 (c) *PETITIONS FOR REVIEW.*—Section 518 (33 U.S.C.
5 1377) is amended by inserting after subsection (h) (as
6 added by subsection (b) of this section) the following:

7 “(i) *DISTRICT COURTS; PETITION FOR REVIEW;*
8 *STANDARD OF REVIEW.*—Notwithstanding the provisions of
9 section 509, the United States district courts shall have ju-
10 risdiction over actions brought to review any determination
11 of the Administrator under section 518. Such an action
12 may be brought by a State or an Indian tribe and shall
13 be filed with the court within the 90-day period beginning
14 on the date of the determination of the Administrator is
15 made. In any such action, the district court shall review
16 the Administrator’s determination *de novo.*”.

17 (d) *DEFINITIONS.*—Section 518(j)(1), as redesignated
18 by subsection (b) of this section, is amended by inserting
19 before the semicolon at the end the following: “, and, in the
20 State of Oklahoma, such term includes lands held in trust
21 by the United States for the benefit of an Indian tribe or
22 an individual member of an Indian tribe, lands which are
23 subject to Federal restrictions against alienation, and lands
24 which are located within a dependent Indian community,
25 as defined in section 1151 of title 18, United States Code”.

1 (e) *RESERVATION OF FUNDS.*—Section 518(c) (33
2 *U.S.C. 1377(c)*) is amended in the first sentence—

3 (1) by striking “beginning after September 30,
4 1986,”;

5 (2) by striking “section 205(e)” and inserting
6 “section 604(a)”;

7 (3) by striking “one-half of”; and

8 (4) by striking “section 207” and inserting “sec-
9 tions 607 and 608”.

10 ***SEC. 510. FOOD PROCESSING AND FOOD SAFETY.***

11 Title V (33 *U.S.C. 1361–1377*) is amended by redesign-
12 ating section 519 as section 521 and by inserting after
13 section 518 the following:

14 ***“SEC. 519. FOOD PROCESSING AND FOOD SAFETY.***

15 *“In developing any effluent guideline under section*
16 *304(b), pretreatment standard under section 307(b), or new*
17 *source performance standard under section 306 that is ap-*
18 *plicable to the food processing industry, the Administrator*
19 *shall consult with and consider the recommendations of the*
20 *Food and Drug Administration, Department of Health and*
21 *Human Services, Department of Agriculture, and Depart-*
22 *ment of Commerce. The recommendations of such depart-*
23 *ments and agencies and a description of the Administra-*
24 *tor’s response to those recommendations shall be made part*
25 *of the rulemaking record for the development of such guide-*

1 *lines and standards. The Administrator’s response shall in-*
2 *clude an explanation with respect to food safety, including*
3 *a discussion of relative risks, of any departure from a rec-*
4 *ommendation by any such department or agency.”.*

5 **SEC. 511. AUDIT DISPUTE RESOLUTION.**

6 *Title V (33 U.S.C. 1361–1377) is further amended by*
7 *inserting before section 521, as redesignated by section 510*
8 *of this Act, the following:*

9 **“SEC. 520. AUDIT DISPUTE RESOLUTION.**

10 *“(a) ESTABLISHMENT OF BOARD.—The Administrator*
11 *shall establish an independent Board of Audit Appeals*
12 *(hereinafter in this section referred to as the ‘Board’) in*
13 *accordance with the requirements of this section.*

14 *“(b) DUTIES.—The Board shall have the authority to*
15 *review and decide contested audit determinations related to*
16 *grant and contract awards under this Act. In carrying out*
17 *such duties, the Board shall consider only those regulations,*
18 *guidance, policies, facts, and circumstances in effect at the*
19 *time of the grant or contract award.*

20 *“(c) PRIOR ELIGIBILITY DECISIONS.—The Board shall*
21 *not reverse project cost eligibility determinations that are*
22 *supported by an decision document of the Environmental*
23 *Protection Agency, including grant or contract approvals,*
24 *plans and specifications approval forms, grant or contract*
25 *payments, change order approval forms, or similar docu-*

1 *ments approving project cost eligibility, except upon a*
2 *showing that such decision was arbitrary, capricious, or an*
3 *abuse of law in effect at the time of such decision.*

4 *“(d) MEMBERSHIP.—*

5 *“(1) APPOINTMENT.—The Board shall be com-*
6 *posed of 7 members to be appointed by the Adminis-*
7 *trator not later than 90 days after the date of the en-*
8 *actment of this section.*

9 *“(2) TERMS.—Each member shall be appointed*
10 *for a term of 3 years.*

11 *“(3) QUALIFICATIONS.—The Administrator shall*
12 *appoint as members of the Board individuals who are*
13 *specially qualified to serve on the Board by virtue of*
14 *their expertise in grant and contracting procedures.*
15 *The Administrator shall make every effort to ensure*
16 *that individuals appointed as members of the Board*
17 *are free from conflicts of interest in carrying out the*
18 *duties of the Board.*

19 *“(e) BASIC PAY AND TRAVEL EXPENSES.—*

20 *“(1) RATES OF PAY.—Except as provided in*
21 *paragraph (2), members shall each be paid at a rate*
22 *of basic pay, to be determined by the Administrator,*
23 *for each day (including travel time) during which*
24 *they are engaged in the actual performance of duties*
25 *vested in the Board.*

1 “(2) *PROHIBITION OF COMPENSATION OF FED-*
2 *ERAL EMPLOYEES.*—Members of the Board who are
3 *full-time officers or employees of the United States*
4 *may not receive additional pay, allowances, or bene-*
5 *fits by reason of their service on the Board.*

6 “(3) *TRAVEL EXPENSES.*—Each member shall re-
7 *ceive travel expenses, including per diem in lieu of*
8 *subsistence, in accordance with sections 5702 and*
9 *5703 of title 5, United States Code.*

10 “(f) *ADMINISTRATIVE SUPPORT SERVICES.*—Upon the
11 *request of the Board, the Administrator shall provide to the*
12 *Board the administrative support services necessary for the*
13 *Board to carry out its responsibilities under this section.*

14 “(g) *DISPUTES ELIGIBLE FOR REVIEW.*—The author-
15 *ity of the Board under this section shall extend to any con-*
16 *tested audit determination that on the date of the enactment*
17 *of this section has yet to be formally concluded and accepted*
18 *by either the grantee or the Administrator.”.*

19 ***TITLE VI—STATE WATER POLLU-***
20 ***TION CONTROL REVOLVING***
21 ***FUNDS***

22 ***SEC. 601. GENERAL AUTHORITY FOR CAPITALIZATION***
23 ***GRANTS.***

24 *Section 601(a) (33 U.S.C. 1381(a)) is amended by*
25 *striking “(1) for construction” and all that follows through*

1 *the period and inserting “to accomplish the purposes of this*
2 *Act.”.*

3 **SEC. 602. CAPITALIZATION GRANT AGREEMENTS.**

4 *(a) REQUIREMENTS FOR CONSTRUCTION OF TREAT-*
5 *MENT WORKS.—Section 602(b)(6) (33 U.S.C. 1382(b)(6))*
6 *is amended—*

7 *(1) by striking “before fiscal year 1995”; and*

8 *(2) by striking “201(b)” and all that follows*
9 *through “218” and inserting “211”.*

10 *(b) COMPLIANCE WITH OTHER FEDERAL LAWS.—Sec-*
11 *tion 602 (33 U.S.C. 1382) is amended by adding at the*
12 *end the following:*

13 *“(c) OTHER FEDERAL LAWS.—*

14 *“(1) COMPLIANCE WITH OTHER FEDERAL*
15 *LAWS.—If a State provides assistance from its water*
16 *pollution control revolving fund established in accord-*
17 *ance with this title and in accordance with a statute,*
18 *rule, executive order, or program of the State which*
19 *addresses the intent of any requirement or any Fed-*
20 *eral executive order or law other than this Act, as de-*
21 *termined by the State, the State in providing such as-*
22 *sistance shall be treated as having met the Federal re-*
23 *quirements.*

24 *“(2) LIMITATION ON APPLICABILITY OF OTHER*
25 *FEDERAL LAWS.—If a State does not meet a require-*

1 *ment of a Federal executive order or law other than*
2 *this Act under paragraph (1), such Federal law shall*
3 *only apply to Federal funds deposited in the water*
4 *pollution control revolving fund established by the*
5 *State in accordance with this title the first time such*
6 *funds are used to provide assistance from the revolv-*
7 *ing fund.”.*

8 *(c) GUIDANCE FOR SMALL SYSTEMS.—Section 602 (33*
9 *U.S.C. 1382) is amended by adding at the end the following*
10 *new subsection:*

11 *“(d) GUIDANCE FOR SMALL SYSTEMS.—*

12 *“(1) SIMPLIFIED PROCEDURES.—Not later than*
13 *1 year after the date of the enactment of this sub-*
14 *section, the Administrator shall assist the States in*
15 *establishing simplified procedures for small systems to*
16 *obtain assistance under this title.*

17 *“(2) PUBLICATION OF MANUAL.—Not later than*
18 *1 year after the date of the enactment of this sub-*
19 *section, and after providing notice and opportunity*
20 *for public comment, the Administrator shall publish*
21 *a manual to assist small systems in obtaining assist-*
22 *ance under this title and publish in the Federal Reg-*
23 *ister notice of the availability of the manual.*

24 *“(3) SMALL SYSTEM DEFINED.—For purposes of*
25 *this title, the term ‘small system’ means a system for*

1 *which a municipality or intermunicipal, interstate,*
2 *or State agency seeks assistance under this title and*
3 *which serves a population of 20,000 or less.”.*

4 **SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN**
5 **FUNDS.**

6 (a) *ACTIVITIES ELIGIBLE FOR ASSISTANCE.*—Section
7 603(c) (33 U.S.C. 1383(c)) is amended to read as follows:

8 “(c) *ACTIVITIES ELIGIBLE FOR ASSISTANCE.*—

9 “(1) *IN GENERAL.*—The amounts of funds avail-
10 able to each State water pollution control revolving
11 fund shall be used only for providing financial assist-
12 ance to activities which have as a principal benefit
13 the improvement or protection of water quality to a
14 municipality, intermunicipal agency, interstate agen-
15 cy, State agency, or other person. Such activities may
16 include the following:

17 “(A) *Construction of a publicly owned*
18 *treatment works if the recipient of such assist-*
19 *ance is a municipality.*

20 “(B) *Implementation of lake protection pro-*
21 *grams and projects under section 314.*

22 “(C) *Implementation of a management pro-*
23 *gram under section 319.*

24 “(D) *Implementation of a conservation and*
25 *management plan under section 320.*

1 “(E) Implementation of a watershed man-
2 agement plan under section 321.

3 “(F) Implementation of a stormwater man-
4 agement program under section 322.

5 “(G) Acquisition of property rights for the
6 restoration or protection of publicly or privately
7 owned riparian areas.

8 “(H) Implementation of measures to im-
9 prove the efficiency of public water use.

10 “(I) Development and implementation of
11 plans by a public recipient to prevent water pol-
12 lution.

13 “(J) Acquisition of lands necessary to meet
14 any mitigation requirements related to construc-
15 tion of a publicly owned treatment works.

16 “(2) FUND AMOUNTS.—The water pollution con-
17 trol revolving fund of a State shall be established,
18 maintained, and credited with repayments, and the
19 fund balance shall be available in perpetuity for pro-
20 viding financial assistance described in paragraph
21 (1). Fees charged by a State to recipients of such as-
22 sistance may be deposited in the fund for the sole pur-
23 pose of financing the cost of administration of this
24 title.”.

1 (b) *EXTENDED REPAYMENT PERIOD FOR DISADVAN-*
2 *TAGED COMMUNITIES.*—Section 603(d)(1) (33 U.S.C.
3 1383(d)(1)) is amended—

4 (1) in subparagraph (A) by inserting after “20
5 years” the following: “or, in the case of a disadvan-
6 taged community, the lesser of 40 years or the ex-
7 pected life of the project to be financed with the pro-
8 ceeds of the loan”; and

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

12 (c) *LOAN GUARANTEES FOR INNOVATIVE TECH-*
13 *NOLOGY.*—Section 603(d)(5) (33 U.S.C. 1383(d)(5)) is
14 amended to read as follows:

15 “(5) to provide loan guarantees for—

16 “(A) similar revolving funds established by
17 municipalities or intermunicipal agencies; and

18 “(B) developing and implementing innova-
19 tive technologies.”.

20 (d) *ADMINISTRATIVE EXPENSES.*—Section 603(d)(7)
21 (33 U.S.C. 1383(d)(7)) is amended by inserting before the
22 period at the end the following: “or \$400,000 per year,
23 whichever is greater, plus the amount of any fees collected
24 by the State for such purpose under subsection (c)(2)”.

1 (e) *TECHNICAL AND PLANNING ASSISTANCE FOR*
2 *SMALL SYSTEMS.—Section 603(d) (33 U.S.C. 1383(d)) is*
3 *amended—*

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

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

8 (3) *by adding at the end the following new para-*
9 *graph:*

10 “(8) *to provide to small systems technical and*
11 *planning assistance and assistance in financial man-*
12 *agement, user fee analysis, budgeting, capital im-*
13 *provement planning, facility operation and mainte-*
14 *nance, repair schedules, and other activities to im-*
15 *prove wastewater treatment plant operations; except*
16 *that such amounts shall not exceed 2 percent of all*
17 *grant awards to such fund under this title.”.*

18 (f) *CONSISTENCY WITH PLANNING REQUIREMENTS.—*
19 *Section 603(f) (33 U.S.C. 1383(f)) is amended by striking*
20 *“and 320” and inserting “320, 321, and 322”.*

21 (g) *LIMITATIONS ON CONSTRUCTION ASSISTANCE.—*
22 *Section 603(g) (33 U.S.C. 1383(g)) is amended to read as*
23 *follows:*

24 “(g) *LIMITATIONS ON CONSTRUCTION ASSISTANCE.—*
25 *The State may provide financial assistance from its water*

1 *pollution control revolving fund with respect to a project*
2 *for construction of a treatment works only if—*

3 *“(1) such project is on the State’s priority list*
4 *under section 216 of this Act; and*

5 *“(2) the recipient of such assistance is a municipi-*
6 *palty in any case in which the treatment works is*
7 *privately owned.”.*

8 *(h) INTEREST RATES.—Section 603 is further amend-*
9 *ed by adding at the end the following:*

10 *“(i) INTEREST RATES.—In any case in which a State*
11 *makes a loan pursuant to subsection (d)(1) to a disadvan-*
12 *taged community, the State may charge a negative interest*
13 *rate of not to exceed 2 percent to reduce the unpaid prin-*
14 *cipal of the loan. The aggregate amount of all such negative*
15 *interest rate loans the State makes in a fiscal year shall*
16 *not exceed 20 percent of the aggregate amount of all loans*
17 *made by the State from its revolving loan fund in such fis-*
18 *cal year.*

19 *“(j) DISADVANTAGED COMMUNITY DEFINED.—As used*
20 *in this section, the term ‘disadvantaged community’ means*
21 *the service area of a publicly owned treatment works with*
22 *respect to which the average annual residential sewage*
23 *treatment charges for a user of the treatment works meet*
24 *affordability criteria established by the State in which the*
25 *treatment works is located (after providing for public re-*

1 *view and comment) in accordance with guidelines to be es-*
2 *tablished by the Administrator, in cooperation with the*
3 *States.”.*

4 *(i) SALE OF TREATMENT WORKS.—Section 603 is fur-*
5 *ther amended by adding at the end the following:*

6 *“(k) SALE OF TREATMENT WORKS.—*

7 *“(1) IN GENERAL.—Notwithstanding any other*
8 *provisions of this Act, any State, municipality,*
9 *intermunicipality, or interstate agency may transfer*
10 *by sale to a qualified private sector entity all or part*
11 *of a treatment works that is owned by such agency*
12 *and for which it received Federal financial assistance*
13 *under this Act if the transfer price will be distributed,*
14 *as amounts are received, in the following order:*

15 *“(A) First reimbursement of the agency of*
16 *the unadjusted dollar amount of the costs of con-*
17 *struction of the treatment works or part thereof*
18 *plus any transaction and fix-up costs incurred*
19 *by the agency with respect to the transfer less the*
20 *amount of such Federal financial assistance pro-*
21 *vided with respect to such costs.*

22 *“(B) If proceeds from the transfer remain*
23 *after such reimbursement, repayment of the Fed-*
24 *eral Government of the amount of such Federal*
25 *financial assistance less the applicable share of*

1 *accumulated depreciation on such treatment*
2 *works (calculated using Internal Revenue Service*
3 *accelerated depreciation schedule applicable to*
4 *treatment works).*

5 “(C) *If any proceeds of such transfer re-*
6 *main after such reimbursement and repayment,*
7 *retention of the remaining proceeds by such*
8 *agency.*

9 “(2) *RELEASE OF CONDITION.—Any requirement*
10 *imposed by regulation or policy for a showing that*
11 *the treatment works are no longer needed to serve*
12 *their original purpose shall not apply.*

13 “(3) *SELECTION OF BUYER.—A State, munici-*
14 *pality, intermunicipality, or interstate agency exer-*
15 *cising the authority granted by this subsection shall*
16 *select a qualified private sector entity on the basis of*
17 *total net cost and other appropriate criteria and shall*
18 *utilize such competitive bidding, direct negotiation, or*
19 *other criteria and procedures as may be required by*
20 *State law.*

21 “(l) *PRIVATE OWNERSHIP OF TREATMENT WORKS.—*

22 “(1) *REGULATORY REVIEW.—The Administrator*
23 *shall review the law and any regulations, policies,*
24 *and procedures of the Environmental Protection*
25 *Agency affecting the construction, improvement, re-*

1 *placement, operation, maintenance, and transfer of*
2 *ownership of current and future treatment works*
3 *owned by a State, municipality, intermunicipality,*
4 *or interstate agency. If permitted by law, the Admin-*
5 *istrator shall modify such regulations, policies, and*
6 *procedures to eliminate any obstacles to the construc-*
7 *tion, improvement, replacement, operation, and*
8 *maintenance of such treatment works by qualified*
9 *private sector entities.*

10 *“(2) REPORT.—Not later than 180 days after the*
11 *date of enactment of this subsection, the Adminis-*
12 *trator shall submit to Congress a report identifying*
13 *any provisions of law that must be changed in order*
14 *to eliminate any obstacles referred to in paragraph*
15 *(1).*

16 *“(3) DEFINITION.—For purposes of this section,*
17 *the term ‘qualified private sector entity’ means any*
18 *nongovernmental individual, group, association, busi-*
19 *ness, partnership, organization, or privately or pub-*
20 *licly held corporation that—*

21 *“(A) has sufficient experience and expertise*
22 *to discharge successfully the responsibilities asso-*
23 *ciated with construction, operation, and mainte-*
24 *nance of a treatment works and to satisfy any*
25 *guarantees that are agreed to in connection with*

1 *a transfer of treatment works under subsection*
2 *(k);*

3 *“(B) has the ability to assure protection*
4 *against insolvency and interruption of services*
5 *through contractual and financial guarantees;*
6 *and*

7 *“(C) with respect to subsection (k), to the*
8 *extent consistent with the North American Free*
9 *Trade Agreement and the General Agreement on*
10 *Tariffs and Trade—*

11 *“(i) is majority-owned and controlled*
12 *by citizens of the United States; and*

13 *“(ii) does not receive subsidies from a*
14 *foreign government.”.*

15 **SEC. 604. ALLOTMENT OF FUNDS.**

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

18 *“(a) FORMULA FOR FISCAL YEARS 1996–2000.—Sums*
19 *authorized to be appropriated pursuant to section 607 for*
20 *each of fiscal years 1996, 1997, 1998, 1999, and 2000 shall*
21 *be allotted for such year by the Administrator not later than*
22 *the 10th day which begins after the date of the enactment*
23 *of the Clean Water Amendments of 1995. Sums authorized*
24 *for each such fiscal year shall be allotted in accordance with*
25 *the following table:*

“States:	Percentage of sums authorized:
Alabama	1.0110
Alaska	0.5411
Arizona	0.7464
Arkansas	0.5914
California	7.9031
Colorado	0.7232
Connecticut	1.3537
Delaware	0.4438
District of Columbia	0.4438
Florida	3.4462
Georgia	1.8683
Hawaii	0.7002
Idaho	0.4438
Illinois	4.9976
Indiana	2.6631
Iowa	1.2236
Kansas	0.8690
Kentucky	1.3570
Louisiana	1.0060
Maine	0.6999
Maryland	2.1867
Massachusetts	3.7518
Michigan	3.8875
Minnesota	1.6618
Mississippi	0.8146
Missouri	2.5063
Montana	0.4438
Nebraska	0.4624
Nevada	0.4438
New Hampshire	0.9035
New Jersey	4.5156
New Mexico	0.4438
New York	12.1969
North Carolina	1.9943
North Dakota	0.4438
Ohio	5.0898
Oklahoma	0.7304
Oregon	1.2399
Pennsylvania	4.2145
Rhode Island	0.6071
South Carolina	0.9262
South Dakota	0.4438
Tennessee	1.4668
Texas	4.6458
Utah	0.4764
Vermont	0.4438
Virginia	2.2615
Washington	1.9217
West Virginia	1.4249
Wisconsin	2.4442
Wyoming	0.4438
Puerto Rico	1.1792
Northern Marianas	0.0377

American Samoa	0.0812
Guam	0.0587
Pacific Islands Trust Territory	0.1158
Virgin Islands	0.0576.”.

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

4 **SEC. 605. AUTHORIZATION OF APPROPRIATIONS.**

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

6 (1) by striking “and” at the end of paragraph
7 (4);

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

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

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

13 “(7) \$2,500,000,000 for fiscal year 1996;

14 “(8) \$2,500,000,000 for fiscal year 1997;

15 “(9) \$2,500,000,000 for fiscal year 1998;

16 “(10) \$2,500,000,000 for fiscal year 1999; and

17 “(11) \$2,500,000,000 for fiscal year 2000.”.

18 **SEC. 606. STATE NONPOINT SOURCE WATER POLLUTION**
19 **CONTROL REVOLVING FUNDS.**

20 Title VI (33 U.S.C. 1381–1387) is amended—

21 (1) in section 607 by inserting after “title” the
22 following: “(other than section 608)”; and

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

1 **“SEC. 608. STATE NONPOINT SOURCE WATER POLLUTION**
2 **CONTROL REVOLVING FUNDS.**

3 *“(a) GENERAL AUTHORITY.—The Administrator shall*
4 *make capitalization grants to each State for the purpose*
5 *of establishing a nonpoint source water pollution control*
6 *revolving fund for providing assistance—*

7 *“(1) to persons for carrying out management*
8 *practices and measures under the State management*
9 *program approved under section 319; and*

10 *“(2) to agricultural producers for the develop-*
11 *ment and implementation of the water quality com-*
12 *ponents of a whole farm or ranch resource manage-*
13 *ment plan and for implementation of management*
14 *practices and measures under such a plan.*

15 *A State nonpoint source water pollution control revolving*
16 *fund shall be separate from any other State water pollution*
17 *control revolving fund; except that the chief executive officer*
18 *of the State may transfer funds from one fund to the other*
19 *fund.*

20 *“(b) APPLICABILITY OF OTHER REQUIREMENTS OF*
21 *THIS TITLE.—Except to the extent the Administrator, in*
22 *consultation with the chief executive officers of the States,*
23 *determines that a provision of this title is not consistent*
24 *with a provision of this section, the provisions of sections*
25 *601 through 606 of this title shall apply to grants made*
26 *under this section in the same manner and to the same ex-*

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

3 (c) *SECTION 204.*—*Section 204(a)(3) (33 U.S.C.*
4 *1284(a)(3)) is amended by striking the final period and in-*
5 *serting a semicolon.*

6 (d) *SECTION 205.*—*Section 205 (33 U.S.C. 1285) is*
7 *amended—*

8 (1) *in subsection (c)(2) by striking “and 1985”*
9 *and inserting “1985, and 1986”;*

10 (2) *in subsection (c)(2) by striking “through*
11 *1985” and inserting “through 1986”;*

12 (3) *in subsection (g)(1) by striking the period*
13 *following “4 per centum”; and*

14 (4) *in subsection (m)(1)(B) by striking “this”*
15 *the last place it appears and inserting “such”.*

16 (e) *SECTION 208.*—*Section 208 (33 U.S.C. 1288) is*
17 *amended—*

18 (1) *in subsection (h)(1) by striking “designed”*
19 *and inserting “designated”; and*

20 (2) *in subsection (j)(1) by striking “September*
21 *31, 1988” and inserting “September 30, 1988”.*

22 (f) *SECTION 301.*—*Section 301(j)(1)(A) (33 U.S.C.*
23 *1311(j)(1)(A)) is amended by striking “that” the first place*
24 *it appears and inserting “than”.*

1 (g) *SECTION 309.*—*Section 309(d) (33 U.S.C. 1319(d))*
2 *is amended by striking the second comma following “Act*
3 *by a State”.*

4 (h) *SECTION 311.*—*Section 311 (33 U.S.C. 1321) is*
5 *amended—*

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

9 (2) *in subsection (h)(2) by striking “The” and*
10 *inserting “the”.*

11 (i) *SECTION 505.*—*Section 505(f) (33 U.S.C. 1365(f))*
12 *is amended by striking the last comma.*

13 (j) *SECTION 516.*—*Section 516 (33 U.S.C. 1375) is*
14 *amended by redesignating subsection (g) as subsection (f).*

15 (k) *SECTION 518.*—*Section 518(f) (33 U.S.C. 1377(f))*
16 *is amended by striking “(d)” and inserting “(e)”.*

17 **SEC. 702. JOHN A. BLATNIK NATIONAL FRESH WATER QUAL-**
18 **ITY RESEARCH LABORATORY.**

19 (a) *DESIGNATION.*—*The laboratory and research facil-*
20 *ity established pursuant to section 104(e) of the Federal*
21 *Water Pollution Control Act (33 U.S.C. 1254(e)) that is lo-*
22 *cated in Duluth, Minnesota, shall be known and designated*
23 *as the “John A. Blatnik National Fresh Water Quality Re-*
24 *search Laboratory”.*

1 (b) *REFERENCES.*—Any reference in a law, map, regu-
2 lation, document, paper, or other record of the United
3 States to the laboratory and research facility referred to in
4 subsection (a) shall be deemed to be a reference to the “John
5 A. Blatnik National Fresh Water Quality Research Labora-
6 tory”.

7 **SEC. 703. WASTEWATER SERVICE FOR COLONIAS.**

8 (a) *GRANT ASSISTANCE.*—The Administrator may
9 make grants to States along the United States-Mexico bor-
10 der to provide assistance for planning, design, and con-
11 struction of treatment works to provide wastewater service
12 to the communities along such border commonly known as
13 “colonias”.

14 (b) *FEDERAL SHARE.*—The Federal share of the cost
15 of a project carried out using funds made available under
16 subsection (a) shall be 50 percent. The non-Federal share
17 of such cost shall be provided by the State receiving the
18 grant.

19 (c) *TREATMENT WORKS DEFINED.*—For purposes of
20 this section, the term “treatment works” has the meaning
21 such term has under section 212 of the Federal Water Pollu-
22 tion Control Act.

23 (d) *AUTHORIZATION OF APPROPRIATIONS.*—There is
24 authorized to be appropriated for making grants under sub-

1 *section (a) \$50,000,000 for fiscal year 1996. Such sums*
2 *shall remain available until expended.*

3 **SEC. 704. SAVINGS IN MUNICIPAL DRINKING WATER COSTS.**

4 *(a) STUDY.—The Administrator of the Environmental*
5 *Protection Agency, in consultation with the Director of the*
6 *Office of Management and Budget, shall review, analyze,*
7 *and compile information on the annual savings that mu-*
8 *nicipalities realize in the construction, operation, and*
9 *maintenance of drinking water facilities as a result of ac-*
10 *tions taken under the Federal Water Pollution Control Act.*

11 *(b) CONTENTS.—The study conducted under subsection*
12 *(a), at a minimum, shall contain an examination of the*
13 *following elements:*

14 *(1) Savings to municipalities in the construction*
15 *of drinking water filtration facilities resulting from*
16 *actions taken under the Federal Water Pollution Con-*
17 *trol Act.*

18 *(2) Savings to municipalities in the operation*
19 *and maintenance of drinking water facilities result-*
20 *ing from actions taken under such Act.*

21 *(3) Savings to municipalities in health expendi-*
22 *tures resulting from actions taken under such Act.*

23 *(c) REPORT.—Not later than 1 year after the date of*
24 *the enactment of this Act, the Administrator shall transmit*

1 to Congress a report containing the results of the study con-
2 ducted under subsection (a).

3 **TITLE VIII—WETLANDS CON-**
4 **SERVATION AND MANAGE-**
5 **MENT**

6 **SEC. 801. SHORT TITLE.**

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

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

10 (a) *FINDINGS.*—Congress finds that—

11 (1) *wetlands play an integral role in maintain-*
12 *ing the quality of life through material contributions*
13 *to our national economy, food supply, water supply*
14 *and quality, flood control, and fish, wildlife, and*
15 *plant resources, and thus to the health, safety, recre-*
16 *ation and economic well-being of citizens throughout*
17 *the Nation;*

18 (2) *wetlands serve important ecological and nat-*
19 *ural resource functions, such as providing essential*
20 *nesting and feeding habitat for waterfowl, other wild-*
21 *life, and many rare and endangered species, fisheries*
22 *habitat, the enhancement of water quality, and natu-*
23 *ral flood control;*

24 (3) *much of the Nation’s resource has sustained*
25 *significant degradation, resulting in the need for ef-*

1 *fective programs to limit the loss of ecologically sig-*
2 *nificant wetlands and to provide for long-term res-*
3 *toration and enhancement of the wetlands resource*
4 *base;*

5 (4) *most of the loss of wetlands in coastal Louisi-*
6 *ana is not attributable to human activity;*

7 (5) *because 75 percent of the Nation's wetlands*
8 *in the lower 48 States are privately owned and be-*
9 *cause the majority of the Nation's population lives in*
10 *or near wetlands areas, an effective wetlands con-*
11 *servation and management program must reflect a*
12 *balanced approach that conserves and enhances im-*
13 *portant wetlands values and functions while observing*
14 *private property rights, recognizing the need for es-*
15 *sential public infrastructure, such as highways, ports,*
16 *airports, pipelines, sewer systems, and public water*
17 *supply systems, and providing the opportunity for*
18 *sustained economic growth;*

19 (6) *while wetlands provide many varied eco-*
20 *nomical and environmental benefits, they also present*
21 *health risks in some instances where they act as*
22 *breeding grounds for insects that are carriers of*
23 *human and animal diseases;*

24 (7) *the Federal permit program established*
25 *under section 404 of the Federal Water Pollution Con-*

1 *trol Act was not originally conceived as a wetlands*
2 *regulatory program and is insufficient to ensure that*
3 *the Nation's wetlands resource base will be conserved*
4 *and managed in a fair and environmentally sound*
5 *manner; and*

6 *(8) navigational dredging plays a vital role in*
7 *the Nation's economy and, while adequate safeguards*
8 *for aquatic resources must be maintained, it is essen-*
9 *tial that the regulatory process be streamlined.*

10 *(b) PURPOSE.—The purpose of this title is to establish*
11 *a new Federal regulatory program for certain wetlands and*
12 *waters of the United States—*

13 *(1) to assert Federal regulatory jurisdiction over*
14 *a broad category of specifically identified activities*
15 *that result in the degradation or loss of wetlands;*

16 *(2) to provide that each Federal agency, officer,*
17 *and employee exercise Federal authority under section*
18 *404 of the Federal Water Pollution Control Act to en-*
19 *sure that agency action under such section will not*
20 *limit the use of privately owned property so as to di-*
21 *minish its value;*

22 *(3) to account for variations in wetlands func-*
23 *tions in determining the character and extent of regu-*
24 *lation of activities occurring in wetlands areas;*

1 (4) to provide sufficient regulatory incentives for
2 conservation, restoration, or enhancement activities;

3 (5) to encourage conservation of resources on a
4 watershed basis to the fullest extent practicable;

5 (6) to protect public safety and balance public
6 and private interests in determining the conditions
7 under which activity in wetlands areas may occur;
8 and

9 (7) to streamline the regulatory mechanisms re-
10 lating to navigational dredging in the Nation's wa-
11 ters.

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

13 Title IV (33 U.S.C. 1341 et seq.) is further amended
14 by striking section 404 and inserting the following new sec-
15 tion:

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

18 “(a) *PROHIBITED ACTIVITIES.*—No person shall un-
19 dertake an activity in wetlands or waters of the United
20 States unless such activity is undertaken pursuant to a per-
21 mit issued by the Secretary or is otherwise authorized under
22 this section.

23 “(b) *AUTHORIZED ACTIVITIES.*—

24 “(1) *PERMITS.*—The Secretary is authorized to
25 issue permits authorizing an activity in wetlands or

1 *waters of the United States in accordance with the re-*
2 *quirements of this section.*

3 “(2) *NONPERMIT ACTIVITIES.*—*An activity in*
4 *wetlands or waters of the United States may be un-*
5 *dertaken without a permit from the Secretary if that*
6 *activity is authorized under subsection (e)(6) or (e)(8)*
7 *or is exempt from the requirements of this section*
8 *under subsection (f) or other provisions of this section.*

9 “(c) *WETLANDS CLASSIFICATION.*—

10 “(1) *REGULATIONS; APPLICATIONS.*—

11 “(A) *DEADLINE FOR ISSUANCE OF REGULA-*
12 *TIONS.*—*Not later than 1 year after the date of*
13 *the enactment of the Comprehensive Wetlands*
14 *Conservation and Management Act of 1995, the*
15 *Secretary shall issue regulations to classify wet-*
16 *lands as type A, type B, or type C wetlands de-*
17 *pending on the relative ecological significance of*
18 *the wetlands.*

19 “(B) *APPLICATION REQUIREMENT.*—*Any*
20 *person seeking to undertake activities in wet-*
21 *lands or waters of the United States for which*
22 *a permit is required under this section shall*
23 *make application to the Secretary identifying*
24 *the site of such activity and requesting that the*
25 *Secretary determine, in accordance with para-*

1 *graph (3) of this subsection, the classification of*
2 *the wetlands in which such activity is proposed*
3 *to occur. The applicant may also provide such*
4 *additional information regarding such proposed*
5 *activity as may be necessary or appropriate for*
6 *purposes of determining the classification of such*
7 *wetlands or whether and under what conditions*
8 *the proposed activity may be permitted to occur.*

9 *“(2) DEADLINES FOR CLASSIFICATIONS.—*

10 *“(A) GENERAL RULE.—Except as provided*
11 *in subparagraph (B) of this paragraph, within*
12 *90 days following the receipt of an application*
13 *under paragraph (1), the Secretary shall provide*
14 *notice to the applicant of the classification of the*
15 *wetlands that are the subject of such application*
16 *and shall state in writing the basis for such clas-*
17 *sification. The classification of the wetlands that*
18 *are the subject of the application shall be deter-*
19 *mined by the Secretary in accordance with the*
20 *requirements for classification of wetlands under*
21 *paragraph (3) and subsection (i).*

22 *“(B) RULE FOR ADVANCE CLASSIFICA-*
23 *TIONS.—In the case of an application proposing*
24 *activities located in wetlands that are the subject*
25 *of an advance classification under subsection (h),*

1 *the Secretary shall provide notice to the appli-*
2 *cant of such classification within thirty days fol-*
3 *lowing the receipt of such application, and shall*
4 *provide an opportunity for review of such classi-*
5 *fication under paragraph (5) and subsection (i).*

6 “(3) *CLASSIFICATION SYSTEM.*—*Upon applica-*
7 *tion under this subsection, the Secretary shall—*

8 “(A) *classify as type A wetlands those wet-*
9 *lands that are of critical significance to the long-*
10 *term conservation of the aquatic environment of*
11 *which such wetlands are a part and which meet*
12 *the following requirements:*

13 “(i) *such wetlands serve critical wet-*
14 *lands functions, including the provision of*
15 *critical habitat for a concentration of*
16 *avian, aquatic, or wetland dependent wild-*
17 *life;*

18 “(ii) *such wetlands consist of or may*
19 *be a portion of ten or more contiguous acres*
20 *and have an inlet or outlet for relief of*
21 *water flow; except that this requirement*
22 *shall not operate to preclude the classifica-*
23 *tion as type A wetlands lands containing*
24 *prairie pothole features, playa lakes, or ver-*
25 *nal pools if such lands otherwise meet the*

1 *requirements for type A classification under*
2 *this paragraph;*

3 *“(iii) there exists a scarcity within the*
4 *watershed or aquatic environment of identi-*
5 *fied functions served by such wetlands such*
6 *that the use of such wetlands for an activity*
7 *in wetlands or waters of the United States*
8 *would seriously jeopardize the availability*
9 *of these identified wetlands functions; and*

10 *“(iv) there is unlikely to be an over-*
11 *riding public interest in the use of such wet-*
12 *lands for purposes other than conservation;*

13 *“(B) classify as type B wetlands those wet-*
14 *lands that provide habitat for a significant pop-*
15 *ulation of wetland dependent wildlife or provide*
16 *other significant wetlands functions, including*
17 *significant enhancement or protection of water*
18 *quality or significant natural flood control; and*

19 *“(C) classify as type C wetlands all wet-*
20 *lands that—*

21 *“(i) serve limited wetlands functions;*

22 *“(ii) serve marginal wetlands functions*
23 *but which exist in such abundance that reg-*
24 *ulation of activities in such wetlands is not*

1 *necessary for conserving important wetlands*
2 *functions;*

3 “(iii) *are prior converted cropland;*

4 “(iv) *are fastlands; or*

5 “(v) *are wetlands within industrial,*
6 *commercial, or residential complexes or*
7 *other intensely developed areas that do not*
8 *serve significant wetlands functions as a re-*
9 *sult of such location.*

10 “(4) *REQUEST FOR DETERMINATION OF JURIS-*
11 *DICTION.—*

12 “(A) *IN GENERAL.—A person who holds an*
13 *ownership interest in property, or who has writ-*
14 *ten authorization from such a person, may sub-*
15 *mit a request to the Secretary identifying the*
16 *property and requesting the Secretary to make*
17 *one or more of the following determinations with*
18 *respect to the property:*

19 “(i) *Whether the property contains wa-*
20 *ters of the United States.*

21 “(ii) *If the determination under clause*
22 *(i) is made, whether any portion of the wa-*
23 *ters meets the requirements for delineation*
24 *as wetland under subsection (g).*

1 “(iii) If the determination under
2 clause (ii) is made, the classification of each
3 wetland on the property under this sub-
4 section.

5 “(B) *PROVISION OF INFORMATION.*—The
6 person shall provide such additional information
7 as may be necessary to make each determination
8 requested under subparagraph (A).

9 “(C) *DETERMINATION AND NOTIFICATION BY*
10 *THE SECRETARY.*—Not later than 90 days after
11 receipt of a request under subparagraph (A), the
12 Secretary shall—

13 “(i) notify the person submitting the
14 request of each determination made by the
15 Secretary pursuant to the request; and

16 “(ii) provide written documentation of
17 each determination and the basis for each
18 determination.

19 “(D) *AUTHORITY TO SEEK IMMEDIATE RE-*
20 *VIEW.*—Any person authorized under this para-
21 graph to request a jurisdictional determination
22 may seek immediate judicial review of any such
23 jurisdictional determination or may proceed
24 under subsection (i).

1 “(5) *DE NOVO DETERMINATION AFTER ADVANCE*
2 *CLASSIFICATION.*—*Within 30 days of receipt of notice*
3 *of an advance classification by the Secretary under*
4 *paragraph (2)(B) of this subsection, an applicant*
5 *may request the Secretary to make a de novo deter-*
6 *mination of the classification of wetlands that are the*
7 *subject of such notice.*

8 “(d) *RIGHT TO COMPENSATION.*—

9 “(1) *IN GENERAL.*—*The Federal Government*
10 *shall compensate an owner of property whose use of*
11 *any portion of that property has been limited by an*
12 *agency action under this section that diminishes the*
13 *fair market value of that portion by 20 percent or*
14 *more. The amount of the compensation shall equal the*
15 *diminution in value that resulted from the agency ac-*
16 *tion. If the diminution in value of a portion of that*
17 *property is greater than 50 percent, at the option of*
18 *the owner, the Federal Government shall buy that*
19 *portion of the property for its fair market value.*

20 “(2) *DURATION OF LIMITATION ON USE.*—*Prop-*
21 *erty with respect to which compensation has been*
22 *paid under this section shall not thereafter be used*
23 *contrary to the limitation imposed by the agency ac-*
24 *tion, even if that action is later rescinded or otherwise*
25 *vitiated. However, if that action is later rescinded or*

1 *otherwise vitiated, and the owner elects to refund the*
2 *amount of the compensation, adjusted for inflation, to*
3 *the Treasury of the United States, the property may*
4 *be so used.*

5 *“(3) EFFECT OF STATE LAW.—If a use is a nui-*
6 *sance as defined by the law of a State or is already*
7 *prohibited under a local zoning ordinance, no com-*
8 *ensation shall be made under this section with re-*
9 *spect to a limitation on that use.*

10 *“(4) EXCEPTIONS.—*

11 *“(A) PREVENTION OF HAZARD TO HEALTH*
12 *OR SAFETY OR DAMAGE TO SPECIFIC PROP-*
13 *ERTY.—No compensation shall be made under*
14 *this section with respect to an agency action the*
15 *primary purpose of which is to prevent an iden-*
16 *tifiable—*

17 *“(i) hazard to public health or safety;*

18 *or*

19 *“(ii) damage to specific property other*
20 *than the property whose use is limited.*

21 *“(B) NAVIGATION SERVITUDE.—No com-*
22 *ensation shall be made under this section with*
23 *respect to an agency action pursuant to the Fed-*
24 *eral navigation servitude, as defined by the*
25 *courts of the United States, except to the extent*

1 *such servitude is interpreted to apply to wet-*
2 *lands.*

3 “(5) *PROCEDURE.*—

4 “(A) *REQUEST OF OWNER.*—*An owner seek-*
5 *ing compensation under this section shall make*
6 *a written request for compensation to the agency*
7 *whose agency action resulted in the limitation.*
8 *No such request may be made later than 180*
9 *days after the owner receives actual notice of*
10 *that agency action.*

11 “(B) *NEGOTIATIONS.*—*The agency may bar-*
12 *gain with that owner to establish the amount of*
13 *the compensation. If the agency and the owner*
14 *agree to such an amount, the agency shall*
15 *promptly pay the owner the amount agreed*
16 *upon.*

17 “(C) *CHOICE OF REMEDIES.*—*If, not later*
18 *than 180 days after the written request is made,*
19 *the parties do not come to an agreement as to the*
20 *right to and amount of compensation, the owner*
21 *may choose to take the matter to binding arbi-*
22 *tration or seek compensation in a civil action.*

23 “(D) *ARBITRATION.*—*The procedures that*
24 *govern the arbitration shall, as nearly as prac-*
25 *ticable, be those established under title 9, United*

1 *States Code, for arbitration proceedings to which*
2 *that title applies. An award made in such arbi-*
3 *tration shall include a reasonable attorney's fee*
4 *and other arbitration costs (including appraisal*
5 *fees). The agency shall promptly pay any award*
6 *made to the owner.*

7 “(E) *CIVIL ACTION.*—*An owner who does*
8 *not choose arbitration, or who does not receive*
9 *prompt payment when required by this section,*
10 *may obtain appropriate relief in a civil action*
11 *against the agency. An owner who prevails in a*
12 *civil action under this section shall be entitled*
13 *to, and the agency shall be liable for, a reason-*
14 *able attorney's fee and other litigation costs (in-*
15 *cluding appraisal fees). The court shall award*
16 *interest on the amount of any compensation*
17 *from the time of the limitation.*

18 “(F) *SOURCE OF PAYMENTS.*—*Any payment*
19 *made under this section to an owner and any*
20 *judgment obtained by an owner in a civil action*
21 *under this section shall, notwithstanding any*
22 *other provision of law, be made from the annual*
23 *appropriation of the agency whose action occa-*
24 *sioned the payment or judgment. If the agency*
25 *action resulted from a requirement imposed by*

1 *another agency, then the agency making the pay-*
2 *ment or satisfying the judgment may seek par-*
3 *tial or complete reimbursement from the appro-*
4 *priated funds of the other agency. For this pur-*
5 *pose the head of the agency concerned may trans-*
6 *fer or reprogram any appropriated funds avail-*
7 *able to the agency. If insufficient funds exist for*
8 *the payment or to satisfy the judgment, it shall*
9 *be the duty of the head of the agency to seek the*
10 *appropriation of such funds for the next fiscal*
11 *year.*

12 “(6) *LIMITATION.*—*Notwithstanding any other*
13 *provision of law, any obligation of the United States*
14 *to make any payment under this section shall be sub-*
15 *ject to the availability of appropriations.*

16 “(7) *DUTY OF NOTICE TO OWNERS.*—*Whenever*
17 *an agency takes an agency action limiting the use of*
18 *private property, the agency shall give appropriate*
19 *notice to the owners of that property directly affected*
20 *explaining their rights under this section and the pro-*
21 *cedures for obtaining any compensation that may be*
22 *due to them under this section.*

23 “(8) *RULES OF CONSTRUCTION.*—

24 “(A) *EFFECT ON CONSTITUTIONAL RIGHT*
25 *TO COMPENSATION.*—*Nothing in this section*

1 *shall be construed to limit any right to com-*
2 *ensation that exists under the Constitution,*
3 *laws of the United States, or laws of any State.*

4 “(B) *EFFECT OF PAYMENT.*—*Payment of*
5 *compensation under this section (other than*
6 *when the property is bought by the Federal Gov-*
7 *ernment at the option of the owner) shall not*
8 *confer any rights on the Federal Government*
9 *other than the limitation on use resulting from*
10 *the agency action.*

11 “(9) *TREATMENT OF CERTAIN ACTIONS.*—*A dim-*
12 *inution in value under this subsection shall apply to*
13 *surface interests in lands only or water rights allo-*
14 *cated under State law; except that—*

15 “(A) *if the Secretary determines that the ex-*
16 *ploration for or development of oil and gas or*
17 *mineral interests is not compatible with limita-*
18 *tions on use related to the surface interests in*
19 *lands that have been classified as type A or type*
20 *B wetlands located above such oil and gas or*
21 *mineral interests (or located adjacent to such oil*
22 *and gas or mineral interests where such adjacent*
23 *lands are necessary to provide reasonable access*
24 *to such interests), the Secretary shall notify the*
25 *owner of such interests that the owner may elect*

1 to receive compensation for such interests under
2 paragraph (1); and

3 “(B) the failure to provide reasonable access
4 to oil and gas or mineral interests located be-
5 neath or adjacent to surface interests of type A
6 or type B wetlands shall be deemed a diminution
7 in value of such oil and gas or mineral interests.

8 “(10) JURISDICTION.—The arbitrator or court
9 under paragraph (5)(D) or (5)(E) of this subsection,
10 as the case may be, shall have jurisdiction, in the case
11 of oil and gas or mineral interests, to require the
12 United States to provide reasonable access in, across,
13 or through lands that may be the subject of a diminu-
14 tion in value under this subsection solely for the pur-
15 pose of undertaking activity necessary to determine
16 the value of the interests diminished and to provide
17 other equitable remedies deemed appropriate.

18 “(11) LIMITATIONS ON STATUTORY CONSTRUC-
19 TION.—No action under this subsection shall be con-
20 strued—

21 “(A) to impose any obligation on any State
22 or political subdivision thereof to compensate
23 any person, even in the event that the Secretary
24 has approved a land management plan under

1 *subsection (f)(2) or an individual and general*
2 *permit program under subsection (l); or*

3 *“(B) to alter or supersede requirements gov-*
4 *erning use of water applicable under State law.*

5 *“(e) REQUIREMENTS APPLICABLE TO PERMITTED AC-*
6 *TIVITY.—*

7 *“(1) ISSUANCE OR DENIAL OF PERMITS.—Fol-*
8 *lowing the determination of wetlands classification*
9 *pursuant to subsection (c) if applicable, and after*
10 *compliance with the requirements of subsection (d) if*
11 *applicable, the Secretary may issue or deny permits*
12 *for authorization to undertake activities in wetlands*
13 *or waters of the United States in accordance with the*
14 *requirements of this subsection.*

15 *“(2) TYPE A WETLANDS.—*

16 *“(A) SEQUENTIAL ANALYSIS.—The Sec-*
17 *retary shall determine whether to issue a permit*
18 *for an activity in waters of the United States*
19 *classified under subsection (c) as type A wet-*
20 *lands based on a sequential analysis that seeks,*
21 *to the maximum extent practicable, to—*

22 *“(i) avoid adverse impact on the wet-*
23 *lands;*

1 “(ii) minimize such adverse impact on
2 wetlands functions that cannot be avoided;
3 and

4 “(iii) compensate for any loss of wet-
5 land functions that cannot be avoided or
6 minimized.

7 “(B) MITIGATION TERMS AND CONDI-
8 TIONS.—Any permit issued authorizing activities
9 in type A wetlands may contain such terms and
10 conditions concerning mitigation (including
11 those applicable under paragraph (3) for type B
12 wetlands) that the Secretary deems appropriate
13 to prevent the unacceptable loss or degradation of
14 type A wetlands. The Secretary shall deem the
15 mitigation requirement of this section to be met
16 with respect to activities in type A wetlands if
17 such activities (i) are carried out in accordance
18 with a State-approved reclamation plan or per-
19 mit which requires recontouring and revegetation
20 following mining, and (ii) will result in overall
21 environmental benefits being achieved.

22 “(3) TYPE B WETLANDS.—

23 “(A) GENERAL RULE.—The Secretary may
24 issue a permit authorizing activities in type B
25 wetlands if the Secretary finds that issuance of

1 *the permit is in the public interest, balancing the*
2 *reasonably foreseeable benefits and detriments re-*
3 *sulting from the issuance of the permit. The per-*
4 *mit shall be subject to such terms and conditions*
5 *as the Secretary finds are necessary to carry out*
6 *the purposes of the Comprehensive Wetlands Con-*
7 *servation and Management Act of 1995. In deter-*
8 *mining whether or not to issue the permit and*
9 *whether or not specific terms and conditions are*
10 *necessary to avoid a significant loss of wetlands*
11 *functions, the Secretary shall consider the follow-*
12 *ing factors:*

13 *“(i) The quality and quantity of sig-*
14 *nificant functions served by the areas to be*
15 *affected.*

16 *“(ii) The opportunities to reduce im-*
17 *pacts through cost effective design to mini-*
18 *mize use of wetlands areas.*

19 *“(iii) The costs of mitigation require-*
20 *ments and the social, recreational, and eco-*
21 *nomical benefits associated with the proposed*
22 *activity, including local, regional, or na-*
23 *tional needs for improved or expanded in-*
24 *frastructure, minerals, energy, food produc-*
25 *tion, or recreation.*

1 “(iv) *The ability of the permittee to*
2 *mitigate wetlands loss or degradation as*
3 *measured by wetlands functions.*

4 “(v) *The environmental benefit, meas-*
5 *ured by wetlands functions, that may occur*
6 *through mitigation efforts, including restor-*
7 *ing, preserving, enhancing, or creating wet-*
8 *lands values and functions.*

9 “(vi) *The marginal impact of the pro-*
10 *posed activity on the watershed of which*
11 *such wetlands are a part.*

12 “(vii) *Whether the impact on the wet-*
13 *lands is temporary or permanent.*

14 “(B) *DETERMINATION OF PROJECT PUR-*
15 *POSE.—In considering an application for activi-*
16 *ties on type B wetlands, there shall be a rebutta-*
17 *ble presumption that the project purpose as de-*
18 *finied by the applicant shall be binding upon the*
19 *Secretary. The definition of project purpose for*
20 *projects sponsored by public agencies shall be*
21 *binding upon the Secretary, subject to the au-*
22 *thority of the Secretary to impose mitigation re-*
23 *quirements to minimize impacts on wetlands*
24 *values and functions, including cost effective re-*
25 *design of projects on the proposed project site.*

1 “(C) *MITIGATION REQUIREMENTS.*—*Except*
2 *as otherwise provided in this section, require-*
3 *ments for mitigation shall be imposed when the*
4 *Secretary finds that activities undertaken under*
5 *this section will result in the loss or degradation*
6 *of type B wetlands functions where such loss or*
7 *degradation is not a temporary or incidental*
8 *impact. When determining mitigation require-*
9 *ments in any specific case, the Secretary shall*
10 *take into consideration the type of wetlands af-*
11 *ected, the character of the impact on wetland*
12 *functions, whether any adverse effects on wet-*
13 *lands are of a permanent or temporary nature,*
14 *and the cost effectiveness of such mitigation and*
15 *shall seek to minimize the costs of such mitiga-*
16 *tion. Such mitigation requirement shall be cal-*
17 *culated based upon the specific impact of a par-*
18 *ticular project. The Secretary shall deem the*
19 *mitigation requirement of this section to be met*
20 *with respect to activities in type B wetlands if*
21 *such activities (i) are carried out in accordance*
22 *with a State-approved reclamation plan or per-*
23 *mit which requires recontouring and revegetation*
24 *following mining, and (ii) will result in overall*
25 *environmental benefits being achieved.*

1 “(D) *RULES GOVERNING MITIGATION.*—In
2 accordance with subsection (j), the Secretary
3 shall issue rules governing requirements for miti-
4 gation for activities occurring in wetlands that
5 allow for—

6 “(i) *minimization of impacts through*
7 *project design in the proposed project site*
8 *consistent with the project’s purpose, provi-*
9 *sions for compensatory mitigation, if any,*
10 *and other terms and conditions necessary*
11 *and appropriate in the public interest;*

12 “(ii) *preservation or donation of type*
13 *A wetlands or type B wetlands (where title*
14 *has not been acquired by the United States*
15 *and no compensation under subsection (d)*
16 *for such wetlands has been provided) as*
17 *mitigation for activities that alter or de-*
18 *grade wetlands;*

19 “(iii) *enhancement or restoration of*
20 *degraded wetlands as compensation for wet-*
21 *lands lost or degraded through permitted ac-*
22 *tivity;*

23 “(iv) *creation of wetlands as com-*
24 *penensation for wetlands lost or degraded*
25 *through permitted activity if conditions are*

1 *imposed that have a reasonable likelihood of*
2 *being successful;*

3 *“(v) compensation through contribu-*
4 *tion to a mitigation bank program estab-*
5 *lished pursuant to paragraph (4);*

6 *“(vi) offsite compensatory mitigation if*
7 *such mitigation contributes to the restora-*
8 *tion, enhancement or creation of significant*
9 *wetlands functions on a watershed basis*
10 *and is balanced with the effects that the*
11 *proposed activity will have on the specific*
12 *site; except that offsite compensatory miti-*
13 *gation, if any, shall be required only within*
14 *the State within which the proposed activ-*
15 *ity is to occur, and shall, to the extent prac-*
16 *ticable, be within the watershed within*
17 *which the proposed activity is to occur, un-*
18 *less otherwise consistent with a State wet-*
19 *lands management plan;*

20 *“(vii) contribution of in-kind value ac-*
21 *ceptable to the Secretary and otherwise au-*
22 *thorized by law;*

23 *“(viii) in areas subject to wetlands*
24 *loss, the construction of coastal protection*
25 *and enhancement projects;*

1 “(ix) contribution of resources of more
2 than one permittee toward a single mitiga-
3 tion project; and

4 “(x) other mitigation measures, includ-
5 ing contributions of other than in-kind
6 value referred to in clause (vii), determined
7 by the Secretary to be appropriate in the
8 public interest and consistent with the re-
9 quirements and purposes of this Act.

10 “(E) LIMITATIONS ON REQUIRING MITIGA-
11 TION.—Notwithstanding the provisions of sub-
12 paragraph (C), the Secretary may determine not
13 to impose requirements for compensatory mitiga-
14 tion if the Secretary finds that—

15 “(i) the adverse impacts of a permitted
16 activity are limited;

17 “(ii) the failure to impose compen-
18 satory mitigation requirements is compat-
19 ible with maintaining wetlands functions;

20 “(iii) no practicable and reasonable
21 means of mitigation are available;

22 “(iv) there is an abundance of similar
23 significant wetlands functions and values in
24 or near the area in which the proposed ac-
25 tivity is to occur that will continue to serve

1 *the functions lost or degraded as a result of*
2 *such activity, taking into account the im-*
3 *pacts of such proposed activity and the cu-*
4 *mulative impacts of similar activity in the*
5 *area;*

6 “(v) *the temporary character of the im-*
7 *pacts and the use of minimization tech-*
8 *niques make compensatory mitigation un-*
9 *necessary to protect significant wetlands*
10 *values; or*

11 “(vi) *a waiver from requirements for*
12 *compensatory mitigation is necessary to*
13 *prevent special hardship.*

14 “(4) *MITIGATION BANKS.—*

15 “(A) *ESTABLISHMENT.—Not later than 6*
16 *months after the date of the enactment of this*
17 *subparagraph, after providing notice and oppor-*
18 *tunity for public review and comment, the Sec-*
19 *retary shall issue regulations for the establish-*
20 *ment, use, maintenance, and oversight of mitiga-*
21 *tion banks. The regulations shall be developed in*
22 *consultation with the heads of other appropriate*
23 *Federal agencies.*

1 “(B) *PROVISIONS AND REQUIREMENTS.*—

2 *The regulations issued pursuant to subparagraph*

3 *(A) shall ensure that each mitigation bank—*

4 “(i) *provides for the chemical, phys-*
5 *ical, and biological functions of wetlands or*
6 *waters of the United States which are lost*
7 *as a result of authorized adverse impacts to*
8 *wetlands or other waters of the United*
9 *States;*

10 “(ii) *to the extent practicable and envi-*
11 *ronmentally desirable, provides in-kind re-*
12 *placement of lost wetlands functions and be*
13 *located in, or in proximity to, the same wa-*
14 *tershed or designated geographic area as the*
15 *affected wetlands or waters of the United*
16 *States;*

17 “(iii) *be operated by a public or pri-*
18 *ate entity which has the financial capabil-*
19 *ity to meet the requirements of this para-*
20 *graph, including the deposit of a perform-*
21 *ance bond or other appropriate demonstra-*
22 *tion of financial responsibility to support*
23 *the long-term maintenance of the bank, ful-*
24 *fill responsibilities for long-term monitor-*
25 *ing, maintenance, and protection, and pro-*

1 *vide for the long-term security of ownership*
2 *interests of wetlands and uplands on which*
3 *projects are conducted to protect the wet-*
4 *lands functions associated with the mitiga-*
5 *tion bank;*

6 “(iv) *employ consistent and scientif-*
7 *ically sound methods to determine debits by*
8 *evaluating wetlands functions, project im-*
9 *pacts, and duration of the impact at the*
10 *sites of proposed permits for authorized ac-*
11 *tivities pursuant to this section and to de-*
12 *termine credits based on wetlands functions*
13 *at the site of the mitigation bank;*

14 “(v) *provide for the transfer of credits*
15 *for mitigation that has been performed and*
16 *for mitigation that shall be performed with-*
17 *in a designated time in the future, provided*
18 *that financial bonds shall be posted in suffi-*
19 *cient amount to ensure that the mitigation*
20 *will be performed in the case of default; and*

21 “(vi) *provide opportunity for public*
22 *notice of and comment on proposals for the*
23 *mitigation banks; except that any process*
24 *utilized by a mitigation bank to obtain a*
25 *permit authorizing operations under this*

1 *section before the date of the enactment of*
2 *the Comprehensive Wetlands Conservation*
3 *and Management Act of 1995 satisfies the*
4 *requirement for such public notice and com-*
5 *ment.*

6 *“(5) PROCEDURES AND DEADLINES FOR FINAL*
7 *ACTION.—*

8 *“(A) OPPORTUNITY FOR PUBLIC COM-*
9 *MENT.—Not later than 15 days after receipt of*
10 *a complete application for a permit under this*
11 *section, together with information necessary to*
12 *consider such application, the Secretary shall*
13 *publish notice that the application has been re-*
14 *ceived and shall provide opportunity for public*
15 *comment and, to the extent appropriate, oppor-*
16 *tunity for a public hearing on the issuance of the*
17 *permit.*

18 *“(B) GENERAL PROCEDURES.—In the case*
19 *of any application for authorization to under-*
20 *take activities in wetlands or waters of the Unit-*
21 *ed States that are not eligible for treatment on*
22 *an expedited basis pursuant to paragraph (8),*
23 *final action by the Secretary shall occur within*
24 *90 days following the date such application is*
25 *filed, unless—*

1 “(i) the Secretary and the applicant
2 agree that such final action shall occur
3 within a longer period of time;

4 “(ii) the Secretary determines that an
5 additional, specified period of time is nec-
6 essary to permit the Secretary to comply
7 with other applicable Federal law; except
8 that if the Secretary is required under the
9 National Environmental Policy Act of 1969
10 (42 U.S.C. 4321 et seq.) to prepare an envi-
11 ronmental impact statement, with respect to
12 the application, the final action shall occur
13 not later than 45 days following the date
14 such statement is filed; or

15 “(iii) the Secretary, within 15 days
16 from the date such application is received,
17 notifies the applicant that such application
18 does not contain all information necessary
19 to allow the Secretary to consider such ap-
20 plication and identifies any necessary addi-
21 tional information, in which case, the pro-
22 visions of subparagraph (C) shall apply.

23 “(C) SPECIAL RULE WHEN ADDITIONAL IN-
24 FORMATION IS REQUIRED.—Upon the receipt of
25 a request for additional information under sub-

1 *paragraph (B)(iii), the applicant shall supply*
2 *such additional information and shall advise the*
3 *Secretary that the application contains all re-*
4 *quested information and is therefore complete.*

5 *The Secretary may—*

6 *“(i) within 30 days of the receipt of*
7 *notice of the applicant that the application*
8 *is complete, determine that the application*
9 *does not contain all requested additional in-*
10 *formation and, on that basis, deny the ap-*
11 *plication without prejudice to resubmission;*

12 *or*

13 *“(ii) within 90 days from the date that*
14 *the applicant provides notification to the*
15 *Secretary that the application is complete,*
16 *review the application and take final ac-*
17 *tion.*

18 *“(D) EFFECT OF NOT MEETING DEAD-*
19 *LINE.—If the Secretary fails to take final action*
20 *on an application under this paragraph within*
21 *90 days from the date that the applicant pro-*
22 *vides notification to the Secretary that such ap-*
23 *plication is complete, a permit shall be presumed*
24 *to be granted authorizing the activities proposed*
25 *in such application under such terms and condi-*

1 *tions as are stated in such completed applica-*
2 *tion.*

3 “(6) *TYPE C WETLANDS.*—*Activities in wetlands*
4 *that have been classified as type C wetlands by the*
5 *Secretary may be undertaken without authorization*
6 *required under subsection (a) of this section.*

7 “(7) *STATES WITH SUBSTANTIAL CONSERVED*
8 *WETLANDS.*—

9 “(A) *IN GENERAL.*—*With respect to type A*
10 *and type B wetlands in States with substantial*
11 *conserved wetlands areas, at the option of the*
12 *permit applicant, the Secretary shall issue per-*
13 *mits authorizing activities in such wetlands pur-*
14 *suant to this paragraph. Final action on issu-*
15 *ance of such permits shall be in accordance with*
16 *the procedures and deadlines of paragraph (5).*
17 *The Secretary may include conditions or require-*
18 *ments for minimization of adverse impacts to*
19 *wetlands functions when minimization is eco-*
20 *nomically practicable. No permit to which this*
21 *paragraph applies shall include conditions, re-*
22 *quirements, or standards for mitigation to com-*
23 *pensate for adverse impacts to wetlands or wa-*
24 *ters of the United States or conditions, require-*

1 *ments, or standards for avoidance of adverse im-*
2 *pacts to wetlands or waters of the United States.*

3 “(B) *ECONOMIC BASE LANDS.*—*Upon appli-*
4 *cation by the owner of economic base lands in a*
5 *State with substantial conserved wetlands areas,*
6 *the Secretary shall issue individual and general*
7 *permits to owners of such lands for activities in*
8 *wetlands or waters of the United States. The Sec-*
9 *retary shall reduce the requirements of subpara-*
10 *graph (A)—*

11 “(i) *to allow economic base lands to be*
12 *beneficially used to create and sustain eco-*
13 *nomical activity; and*

14 “(ii) *in the case of lands owned by*
15 *Alaska Native entities, to reflect the social*
16 *and economic needs of Alaska Natives to*
17 *utilize economic base lands.*

18 *The Secretary shall consult with and provide as-*
19 *sistance to the Alaska Natives (including Alaska*
20 *Native Corporations) in promulgation and ad-*
21 *ministration of policies and regulations under*
22 *this section.*

23 “(8) *GENERAL PERMITS.*—

24 “(A) *GENERAL AUTHORITY.*—*The Secretary*
25 *may issue, by rule in accordance with subsection*

1 (j), general permits on a programmatic, State,
2 regional, or nationwide basis for any category
3 of activities involving an activity in wetlands or
4 waters of the United States if the Secretary de-
5 termines that such activities are similar in na-
6 ture and that such activities, when performed
7 separately and cumulatively, will not result in
8 the significant loss of ecologically significant
9 wetlands values and functions.

10 “(B) PROCEDURES.—Permits issued under
11 this paragraph shall include procedures for expe-
12 dited review of eligibility for such permits (if
13 such review is required) and may include re-
14 quirements for reporting and mitigation. To the
15 extent that a proposed activity requires a deter-
16 mination by the Secretary as to the eligibility to
17 qualify for a general permit under this sub-
18 section, such determination shall be made within
19 30 days of the date of submission of the applica-
20 tion for such qualification, or the application
21 shall be treated as being approved.

22 “(C) COMPENSATORY MITIGATION.—Re-
23 quirements for compensatory mitigation for gen-
24 eral permits may be imposed where necessary to
25 offset the significant loss or degradation of sig-

1 *nificant wetlands functions where such loss or*
2 *degradation is not a temporary or incidental*
3 *impact. Such compensatory mitigation shall be*
4 *calculated based upon the specific impact of a*
5 *particular project.*

6 *“(D) GRANDFATHER OF EXISTING GENERAL*
7 *PERMITS.—General permits in effect on day be-*
8 *fore the date of the enactment of the Comprehen-*
9 *sive Wetlands Conservation and Management*
10 *Act of 1995 shall remain in effect until otherwise*
11 *modified by the Secretary.*

12 *“(E) STATES WITH SUBSTANTIAL CON-*
13 *SERVED LANDS.—Upon application by a State*
14 *or local authority in a State with substantial*
15 *conserved wetlands areas, the Secretary shall*
16 *issue a general permit applicable to such author-*
17 *ity for activities in wetlands or waters of the*
18 *United States. No permit issued pursuant to this*
19 *subparagraph shall include conditions, require-*
20 *ments, or standards for mitigation to compensate*
21 *for adverse impacts to wetlands or waters of the*
22 *United States or shall include conditions, re-*
23 *quirements, or standards for avoidance of ad-*
24 *verse impacts of wetlands or waters of the United*
25 *States.*

1 “(9) *OTHER WATERS OF THE UNITED STATES.*—

2 *The Secretary may issue a permit authorizing activi-*
3 *ties in waters of the United States (other than those*
4 *classified as type A, B, or C wetlands under this sec-*
5 *tion) if the Secretary finds that issuance of the permit*
6 *is in the public interest, balancing the reasonably*
7 *foreseeable benefits and detriments resulting from the*
8 *issuance of the permit. The permit shall be subject to*
9 *such terms and conditions as the Secretary finds are*
10 *necessary to carry out the purposes of the Comprehen-*
11 *sive Wetlands Conservation and Management Act of*
12 *1995. In determining whether or not to issue the per-*
13 *mit and whether or not specific terms and conditions*
14 *are necessary to carry out such purposes, the Sec-*
15 *retary shall consider the factors set forth in para-*
16 *graph (3)(A) as they apply to nonwetlands areas and*
17 *such other provisions of paragraph (3) as the Sec-*
18 *retary determines are appropriate to apply to*
19 *nonwetlands areas.*

20 “(f) *ACTIVITIES NOT REQUIRING PERMIT.*—

21 “(1) *IN GENERAL.*—*Activities undertaken in any*
22 *wetlands or waters of the United States are exempt*
23 *from the requirements of this section and are not pro-*
24 *hibited by or otherwise subject to regulation under*
25 *this section or section 301 or 402 of this Act (except*

1 *effluent standards or prohibitions under section 307*
2 *of this Act) if such activities—*

3 *“(A) result from normal farming,*
4 *silviculture, aquaculture, and ranching activities*
5 *and practices, including but not limited to plow-*
6 *ing, seeding, cultivating, haying, grazing, nor-*
7 *mal maintenance activities, minor drainage,*
8 *burning of vegetation in connection with such*
9 *activities, harvesting for the production of food,*
10 *fiber, and forest products, or upland soil and*
11 *water conservation practices;*

12 *“(B) are for the purpose of maintenance,*
13 *including emergency reconstruction of recently*
14 *damaged parts, of currently serviceable struc-*
15 *tures such as dikes, dams, levees, flood control*
16 *channels or other engineered flood control facili-*
17 *ties, water control structures, water supply res-*
18 *ervoirs (where such maintenance involves peri-*
19 *odic water level drawdowns) which provide water*
20 *predominantly to public drinking water systems,*
21 *groins, riprap, breakwaters, utility distribution*
22 *and transmission lines, causeways, and bridge*
23 *abutments or approaches, and transportation*
24 *structures;*

1 “(C) are for the purpose of construction or
2 maintenance of farm, stock or aquaculture
3 ponds, wastewater retention facilities (including
4 dikes and berms) that are used by concentrated
5 animal feeding operations, or irrigation canals
6 and ditches or the maintenance of drainage
7 ditches;

8 “(D) are for the purpose of construction of
9 temporary sedimentation basins on a construc-
10 tion site, or the construction of any upland
11 dredged material disposal area, which does not
12 include placement of fill material into the navi-
13 gable waters;

14 “(E) are for the purpose of construction or
15 maintenance of farm roads or forest roads, rail-
16 road lines of up to 10 miles in length, or tem-
17 porary roads for moving mining equipment, ac-
18 cess roads for utility distribution and trans-
19 mission lines if such roads or railroad lines are
20 constructed and maintained, in accordance with
21 best management practices, to assure that flow
22 and circulation patterns and chemical and bio-
23 logical characteristics of the waters are not im-
24 paired, that the reach of the waters is not re-

1 duced, and that any adverse effect on the aquatic
2 environment will be otherwise minimized;

3 “(F) are undertaken on farmed wetlands,
4 except that any change in use of such land for
5 the purpose of undertaking activities that are not
6 exempt from regulation under this subsection
7 shall be subject to the requirements of this section
8 to the extent that such farmed wetlands are ‘wet-
9 lands’ under this section;

10 “(G) result from any activity with respect
11 to which a State has an approved program
12 under section 208(b)(4) of this Act which meets
13 the requirements of subparagraphs (B) and (C)
14 of such section;

15 “(H) are consistent with a State or local
16 land management plan submitted to the Sec-
17 retary and approved pursuant to paragraph (2);

18 “(I) are undertaken in connection with a
19 marsh management and conservation program
20 in a coastal parish in the State of Louisiana
21 where such program has been approved by the
22 Governor of such State or the designee of the
23 Governor;

24 “(J) are undertaken on lands or involve ac-
25 tivities within a State’s coastal zone which are

1 *excluded from regulation under a State coastal*
2 *zone management program approved under the*
3 *Coastal Zone Management Act of 1972 (16*
4 *U.S.C. 1451, et seq.);*

5 *“(K) are undertaken in incidentally created*
6 *wetlands, unless such incidentally created wet-*
7 *lands have exhibited wetlands functions and val-*
8 *ues for more than 5 years in which case activi-*
9 *ties undertaken in such wetlands shall be subject*
10 *to the requirements of this section;*

11 *“(L) are for the purpose of preserving and*
12 *enhancing aviation safety or are undertaken in*
13 *order to prevent an airport hazard;*

14 *“(M) result from aggregate or clay mining*
15 *activities in wetlands conducted pursuant to a*
16 *State or Federal permit that requires the rec-*
17 *lamation of such affected wetlands if such rec-*
18 *lamation will be completed within 5 years of the*
19 *commencement of activities at the site and, upon*
20 *completion of such reclamation, the wetlands will*
21 *support wetlands functions equivalent to the*
22 *functions supported by the wetlands at the time*
23 *of commencement of such activities;*

24 *“(N) are for the placement of a structural*
25 *member for a pile-supported structure, such as a*

1 *pier or dock, or for a linear project such as a*
2 *bridge, transmission or distribution line footing,*
3 *powerline structure, or elevated or other walk-*
4 *way;*

5 *“(O) are for the placement of a piling in*
6 *waters of the United States in a circumstance*
7 *that involves—*

8 *“(i) a linear project described in sub-*
9 *paragraph (N); or*

10 *“(ii) a structure such as a pier, boat-*
11 *house, wharf, marina, lighthouse, or indi-*
12 *vidual house built on stilts solely to reduce*
13 *the potential of flooding;*

14 *“(P) are for the clearing (including mecha-*
15 *nized clearing) of vegetation within a right-of-*
16 *way associated with the development and main-*
17 *tenance of a transmission or distribution line or*
18 *other powerline structure or for the maintenance*
19 *of water supply reservoirs which provide water*
20 *predominantly to public drinking water systems;*

21 *“(Q) are undertaken in or affecting*
22 *waterfilled depressions created in uplands inci-*
23 *dental to construction activity, or are under-*
24 *taken in or affecting pits excavated in uplands*
25 *for the purpose of obtaining fill, sand, gravel, ag-*

1 *gregates, or minerals, unless and until the con-*
2 *struction or excavation operation is abandoned;*
3 *or*

4 *“(R) are undertaken in a State with sub-*
5 *stantial conserved wetlands areas and—*

6 *“(i) are for purposes of providing criti-*
7 *cal infrastructure, including water and*
8 *sewer systems, airports, roads, communica-*
9 *tion sites, fuel storage sites, landfills, hous-*
10 *ing, hospitals, medical clinics, schools, and*
11 *other community infrastructure;*

12 *“(ii) are for construction and mainte-*
13 *nance of log transfer facilities associated*
14 *with log transportation activities;*

15 *“(iii) are for construction of tailings*
16 *impoundments utilized for treatment facili-*
17 *ties (as determined by the development doc-*
18 *ument) for the mining subcategory for*
19 *which the tailings impoundment is con-*
20 *structed; or*

21 *“(iv) are for construction of ice pads*
22 *and ice roads and for purposes of snow stor-*
23 *age and removal.*

24 *“(2) STATE OR LOCAL MANAGEMENT PLAN.—Any*
25 *State or political subdivision thereof acting pursuant*

1 to State authorization may develop a land manage-
2 ment plan with respect to lands that include identi-
3 fied wetlands. The State or local government agency
4 may submit any such plan to the Secretary for review
5 and approval. The Secretary shall, within 60 days,
6 notify in writing the designated State or local official
7 of approval or disapproval of any such plan. The Sec-
8 retary shall approve any plan that is consistent with
9 the purposes of this section. No person shall be enti-
10 tled to judicial review of the decision of the Secretary
11 to approve or disapprove a land management plan
12 under this paragraph. Nothing in this paragraph
13 shall be construed to alter, limit, or supersede the au-
14 thority of a State or political subdivision thereof to
15 establish land management plans for purposes other
16 than the provisions of this subsection.

17 “(g) RULES FOR DELINEATING WETLANDS.—

18 “(1) STANDARDS.—

19 “(A) ISSUANCE OF RULE.—The Secretary is
20 authorized and directed to establish standards,
21 by rule in accordance with subsection (j), that
22 shall govern the delineation of lands as ‘wet-
23 lands’ for purposes of this section. Such rules
24 shall be established after consultation with the
25 heads of other appropriate Federal agencies and

1 *shall be binding on all Federal agencies in con-*
2 *nection with the administration or implementa-*
3 *tion of any provision of this section. The stand-*
4 *ards for delineation of wetlands and any deci-*
5 *sion of the Secretary, the Secretary of Agri-*
6 *culture (in the case of agricultural lands and as-*
7 *sociated nonagricultural lands), or any other*
8 *Federal officer or agency made in connection*
9 *with the administration of this section shall*
10 *comply with the requirements for delineation of*
11 *wetlands set forth in subparagraphs (B) and (C).*

12 “(B) *EXCEPTIONS.*—*The standards estab-*
13 *lished by rule or applied in any case for pur-*
14 *poses of this section shall ensure that lands are*
15 *delineated as wetlands only if such lands are*
16 *found to be ‘wetlands’ under section 502 of this*
17 *Act; except that such standards may not—*

18 “(i) *result in the delineation of lands*
19 *as wetlands unless clear evidence of wet-*
20 *lands hydrology, hydrophytic vegetation,*
21 *and hydric soil are found to be present dur-*
22 *ing the period in which such delineation is*
23 *made, which delineation shall be conducted*
24 *during the growing season unless otherwise*
25 *requested by the applicant;*

1 “(ii) result in the classification of vege-
2 tation as hydrophytic if such vegetation is
3 equally adapted to dry or wet soil condi-
4 tions or is more typically adapted to dry
5 soil conditions than to wet soil conditions;

6 “(iii) result in the classification of
7 lands as wetlands unless some obligate wet-
8 lands vegetation is found to be present dur-
9 ing the period of delineation; except that if
10 such vegetation has been removed for the
11 purpose of evading jurisdiction under this
12 section, this clause shall not apply;

13 “(iv) result in the conclusion that wet-
14 lands hydrology is present unless water is
15 found to be present at the surface of such
16 lands for 21 consecutive days in the grow-
17 ing seasons in a majority of the years for
18 which records are available; and

19 “(v) result in the classification of lands
20 as wetlands that are temporarily or inci-
21 dentally created as a result of adjacent de-
22 velopment activity.

23 “(C) *NORMAL CIRCUMSTANCES.*—In addi-
24 tion to the requirements of subparagraph (B),
25 any standards established by rule or applied to

1 *delineate wetlands for purposes of this section*
2 *shall provide that ‘normal circumstances’ shall*
3 *be determined on the basis of the factual cir-*
4 *cumstances in existence at the time a classifica-*
5 *tion is made under subsection (h) or at the time*
6 *of application under subsection (e), whichever is*
7 *applicable, if such circumstances have not been*
8 *altered by an activity prohibited under this sec-*
9 *tion.*

10 “(2) *LAND AREA CAP FOR TYPE A WETLANDS.—*

11 *No more than 20 percent of any county, parish, or*
12 *borough shall be classified as type A wetlands. Type*
13 *A wetlands in Federal or State ownership (including*
14 *type A wetlands in units of the National Wildlife Ref-*
15 *uge System, the National Park System, and lands*
16 *held in conservation easements) shall be included in*
17 *calculating the percent of type A wetlands in a coun-*
18 *ty, parish, or borough.*

19 “(3) *AGRICULTURAL LANDS.—*

20 “(A) *DELINEATION BY SECRETARY OF AGRICULTURE.—*
21 *For purposes of this section, wet-*
22 *lands located on agricultural lands and associ-*
23 *ated nonagricultural lands shall be delineated*
24 *solely by the Secretary of Agriculture in accord-*

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

3 “(B) *EXEMPTION OF LANDS EXEMPTED*
4 *UNDER FOOD SECURITY ACT.—Any area of agri-*
5 *cultural land or any activities related to the*
6 *land determined to be exempt from the require-*
7 *ments of subtitle C of title XII of the Food Secu-*
8 *rity Act of 1985 (16 U.S.C. 3821 et seq.) shall*
9 *also be exempt from the requirements of this sec-*
10 *tion for such period of time as those lands are*
11 *used as agricultural lands.*

12 “(C) *EFFECT OF APPEAL DETERMINATION*
13 *PURSUANT TO FOOD SECURITY ACT.—Any area*
14 *of agricultural land or any activities related to*
15 *the land determined to be exempt pursuant to an*
16 *appeal taken pursuant to subtitle C of title XII*
17 *of the Food Security Act of 1985 (16 U.S.C.*
18 *3821 et seq.) shall be exempt under this section*
19 *for such period of time as those lands are used*
20 *as agricultural lands.*

21 “(h) *MAPPING AND PUBLIC NOTICE REQUIRE-*
22 *MENTS.—*

23 “(1) *PROVISION OF PUBLIC NOTICE.—Not later*
24 *than 90 days after the date of the enactment of the*
25 *Comprehensive Wetlands Conservation and Manage-*

1 *ment Act of 1995, the Secretary shall provide the*
2 *court of each county, parish, or borough in which the*
3 *wetland subject to classification under subsection (c)*
4 *is located, a notice for posting near the property*
5 *records of the county, parish, or borough. The notice*
6 *shall—*

7 *“(A) state that wetlands regulated under*
8 *this section may be located in the county, parish,*
9 *or borough;*

10 *“(B) provide an explanation understand-*
11 *able to the general public of how wetlands are*
12 *delineated and classified;*

13 *“(C) describe the requirements and restric-*
14 *tions of the regulatory program under this sec-*
15 *tion; and*

16 *“(D) provide instructions on how to obtain*
17 *a delineation and classification of wetlands*
18 *under this section.*

19 *“(2) PROVISION OF DELINEATION DETERMINA-*
20 *TIONS.—On completion under this section of a delin-*
21 *eation and classification of property that contains*
22 *wetlands or a delineation of property that contains*
23 *waters of the United States that are not wetlands, the*
24 *Secretary of Agriculture, in the case of wetlands lo-*
25 *cated on agricultural lands and associated non-*

1 *agricultural lands, and the Secretary, in the case of*
2 *other lands, shall—*

3 *“(A) file a copy of the delineation, includ-*
4 *ing the classification of any wetland located on*
5 *the property, with the records of the property in*
6 *the local courthouse; and*

7 *“(B) serve a copy of the delineation deter-*
8 *mination on every owner of the property on*
9 *record and any person with a recorded mortgage*
10 *or lien on the property.*

11 *“(3) NOTICE OF ENFORCEMENT ACTIONS.—The*
12 *Secretary shall file notice of each enforcement action*
13 *under this section taken with respect to private prop-*
14 *erty with the records of the property in the local*
15 *courthouse.*

16 *“(4) WETLANDS IDENTIFICATION AND CLASSI-*
17 *FICATION PROJECT.—*

18 *“(A) IN GENERAL.—The Secretary and the*
19 *Secretary of Agriculture shall undertake a*
20 *project to identify and classify wetlands in the*
21 *United States that are regulated under this sec-*
22 *tion. The Secretaries shall complete such project*
23 *not later than 10 years after the date of the en-*
24 *actment of the Comprehensive Wetlands Con-*
25 *servation and Management Act of 1995.*

1 “(B) *APPLICABILITY OF DELINEATION*
2 *STANDARDS.*—In conducting the project under
3 this section, the Secretaries shall identify and
4 classify wetlands in accordance with standards
5 for delineation of wetlands established by the
6 Secretaries under subsection (g).

7 “(C) *PUBLIC HEARINGS.*—In conducting the
8 project under this section, the Secretaries shall
9 provide notice and an opportunity for a public
10 hearing in each county, parish or borough of a
11 State before completion of identification and
12 classification of wetlands in such county, parish,
13 or borough.

14 “(D) *PUBLICATION.*—Promptly after com-
15 pletion of identification and classification of
16 wetlands in a county, parish, or borough under
17 this section, the Secretaries shall have published
18 information on such identification and classi-
19 fication in the Federal Register and in publica-
20 tions of wide circulation and take other steps
21 reasonably necessary to ensure that such infor-
22 mation is available to the public.

23 “(E) *REPORTS.*—The Secretaries shall re-
24 port to Congress on implementation of the
25 project to be conducted under this section not

1 *later than 2 years after the date of the enactment*
2 *of the Comprehensive Wetlands Conservation and*
3 *Management Act of 1995 and annually there-*
4 *after.*

5 “(F) *RECORDATION.*—*Any classification of*
6 *lands as wetlands under this section shall, to the*
7 *maximum extent practicable, be recorded on the*
8 *property records in the county, parish, or bor-*
9 *ough in which such wetlands are located.*

10 “(i) *ADMINISTRATIVE APPEALS.*—

11 “(1) *REGULATIONS ESTABLISHING PROCE-*
12 *DURES.*—*Not later than 1 year after the date of the*
13 *enactment of the Comprehensive Wetlands Conserva-*
14 *tion and Management Act of 1995, the Secretary*
15 *shall, after providing notice and opportunity for pub-*
16 *lic comment, issue regulations establishing procedures*
17 *pursuant to which—*

18 “(A) *a landowner may appeal a determina-*
19 *tion of regulatory jurisdiction under this section*
20 *with respect to a parcel of the landowner’s prop-*
21 *erty;*

22 “(B) *a landowner may appeal a wetlands*
23 *classification under this section with respect to a*
24 *parcel of the landowner’s property;*

1 “(C) any person may appeal a determina-
2 tion that the proposed activity on the land-
3 owner’s property is not exempt under subsection
4 (f);

5 “(D) a landowner may appeal a determina-
6 tion that an activity on the landowner’s prop-
7 erty does not qualify under a general permit is-
8 sued under this section;

9 “(E) an applicant for a permit under this
10 section may appeal a determination made pur-
11 suant to this section to deny issuance of the per-
12 mit or to impose a requirement under the per-
13 mit; and

14 “(F) a landowner or any other person re-
15 quired to restore or otherwise alter a parcel of
16 property pursuant to an order issued under this
17 section may appeal such order.

18 “(2) DEADLINE FOR FILING APPEAL.—An appeal
19 brought pursuant to this subsection shall be filed not
20 later than 30 days after the date on which the deci-
21 sion or action on which the appeal is based occurs.

22 “(3) DEADLINE FOR DECISION.—An appeal
23 brought pursuant to this subsection shall be decided
24 not later than 90 days after the date on which the ap-
25 peal is filed.

1 “(4) *PARTICIPATION IN APPEALS PROCESS.*—Any
2 *person who participated in the public comment proc-*
3 *ess concerning a decision or action that is the subject*
4 *of an appeal brought pursuant to this subsection may*
5 *participate in such appeal with respect to those issues*
6 *raised in the person’s written public comments.*

7 “(5) *DECISIONMAKER.*—An appeal brought pur-
8 *suant to this subsection shall be heard and decided by*
9 *an appropriate and impartial official of the Federal*
10 *Government, other than the official who made the de-*
11 *termination or carried out the action that is the sub-*
12 *ject of the appeal.*

13 “(6) *STAY OF PENALTIES AND MITIGATION.*—A
14 *landowner or any other person who has filed an ap-*
15 *peal under this subsection shall not be required to pay*
16 *a penalty or perform mitigation or restoration as-*
17 *essed under this section or section 309 until after the*
18 *appeal has been decided.*

19 “(j) *ADMINISTRATIVE PROVISIONS.*—

20 “(1) *FINAL REGULATIONS FOR ISSUANCE OF*
21 *PERMITS.*—Not later than 1 year after the date of the
22 *enactment of the Comprehensive Wetlands Conserva-*
23 *tion and Management Act of 1995, the Secretary*
24 *shall, after notice and opportunity for comment, issue*
25 *(in accordance with section 553 of title 5 of the Unit-*

1 *ed States Code and this section) final regulations for*
2 *implementation of this section. Such regulations shall,*
3 *in accordance with this section, provide—*

4 *“(A) standards and procedures for the clas-*
5 *sification and delineation of wetlands and proce-*
6 *dures for administrative review of any such clas-*
7 *sification or delineation;*

8 *“(B) standards and procedures for the re-*
9 *view of State or local land management plans*
10 *and State programs for the regulation of wet-*
11 *lands;*

12 *“(C) for the issuance of general permits, in-*
13 *cluding programmatic, State, regional, and na-*
14 *tionwide permits;*

15 *“(D) standards and procedures for the indi-*
16 *vidual permit applications under this section;*

17 *“(E) for enforcement of this section;*

18 *“(F) guidelines for the specification of sites*
19 *for the disposal of dredged or fill material for*
20 *navigational dredging; and*

21 *“(G) any other rules and regulations that*
22 *the Secretary deems necessary or appropriate to*
23 *implement the requirements of this section.*

24 *“(2) NAVIGATIONAL DREDGING GUIDELINES.—*

25 *Guidelines developed under paragraph (1)(F) shall—*

1 “(A) be based upon criteria comparable to
2 the criteria applicable to the territorial seas, the
3 contiguous zone, and the oceans under section
4 403(c); and

5 “(B) ensure that with respect to the issu-
6 ance of permits under this section—

7 “(i) the least costly, environmentally
8 acceptable disposal alternative will be se-
9 lected, taking into consideration cost, exist-
10 ing technology, short term and long term
11 dredging requirements, and logistics;

12 “(ii) a disposal site will be specified
13 after comparing reasonably available up-
14 land, confined aquatic, beneficial use, and
15 open water disposal alternatives on the
16 basis of relative risk, environmental accept-
17 ability, economics, practicability, and cur-
18 rent technological feasibility;

19 “(iii) a disposal site will be specified
20 after comparing the reasonably anticipated
21 environmental and economic benefits of un-
22 dertaking the underlying project to the sta-
23 tus quo; and

24 “(iv) in comparing alternatives and se-
25 lection of a disposal site, management

1 *measures may be considered and utilized to*
2 *limit, to the extent practicable, adverse en-*
3 *vironmental effects by employing suitable*
4 *chemical, biological, or physical techniques*
5 *to prevent unacceptable adverse impacts on*
6 *the environment.*

7 “(3) *JUDICIAL REVIEW OF FINAL REGULA-*
8 *TIONS.—Any judicial review of final regulations is-*
9 *ssued pursuant to this section and the Secretary’s de-*
10 *denial of any petition for the issuance, amendment, or*
11 *repeal of any regulation under this section shall be in*
12 *accordance with sections 701 through 706 of title 5 of*
13 *the United States Code; except that a petition for re-*
14 *view of action of the Secretary in issuing any regula-*
15 *tion or requirement under this section or denying any*
16 *petition for the issuance, amendment, or repeal of any*
17 *regulation under this section may be filed only in the*
18 *United States Court of Appeals for the District of Co-*
19 *lumbia, and such petition shall be filed within 90*
20 *days from the date of such issuance or denial or after*
21 *such date if such petition for review is based solely*
22 *on grounds arising after such ninetieth day. Action of*
23 *the Secretary with respect to which review could have*
24 *been obtained under this subsection shall not be sub-*

1 *ject to judicial review in civil or criminal proceedings*
2 *for enforcement.*

3 “(4) *INTERIM REGULATIONS.*—*The Secretary*
4 *shall, within 90 days after the date of the enactment*
5 *of the Comprehensive Wetlands Conservation and*
6 *Management Act of 1995, issue interim regulations*
7 *consistent with this section to take effect immediately.*
8 *Notice of the interim regulations shall be published in*
9 *the Federal Register, and such regulations shall be*
10 *binding until the issuance of final regulations pursu-*
11 *ant to paragraph (1); except that the Secretary shall*
12 *provide adequate procedures for waiver of any provi-*
13 *sions of such interim regulations to avoid special*
14 *hardship, inequity, or unfair distribution of burdens*
15 *or to advance the purposes of this section.*

16 “(5) *ADMINISTRATION BY SECRETARY.*—*Except*
17 *where otherwise expressly provided in this section, the*
18 *Secretary shall administer this section. The Secretary*
19 *or any other Federal officer or agency in which any*
20 *function under this section is vested or delegated is*
21 *authorized to perform any and all acts (including ap-*
22 *propriate enforcement activity), and to prescribe,*
23 *issue, amend, or rescind such rules or orders as such*
24 *officer or agency may find necessary or appropriate*

1 *with this subsection, subject to the requirements of*
2 *this subsection.*

3 “(k) *ENFORCEMENT.*—

4 “(1) *COMPLIANCE ORDER.*—*Whenever, on the*
5 *basis of reliable and substantial information and*
6 *after reasonable inquiry, the Secretary finds that any*
7 *person is or may be in violation of this section or of*
8 *any condition or limitation set forth in a permit is-*
9 *ssued by the Secretary under this section, the Sec-*
10 *retary shall issue an order requiring such persons to*
11 *comply with this section or with such condition or*
12 *limitation.*

13 “(2) *NOTICE AND OTHER PROCEDURAL REQUIRE-*
14 *MENTS RELATING TO ORDERS.*—*A copy of any order*
15 *issued under this subsection shall be sent immediately*
16 *by the Secretary to the Governor of the State in which*
17 *the violation occurs and the Governors of other af-*
18 *ected States. The person committing the asserted vio-*
19 *lation that results in issuance of the order shall be no-*
20 *tified of the issuance of the order by personal service*
21 *made to the appropriate person or corporate officer.*
22 *The notice shall state with reasonable specificity the*
23 *nature of the asserted violation and specify a time for*
24 *compliance, not to exceed 30 days, which the Sec-*
25 *retary determines is reasonable taking into account*

1 *the seriousness of the asserted violation and any good*
2 *faith efforts to comply with applicable requirements.*
3 *If the person receiving the notice disputes the Sec-*
4 *retary's determination, the person may file an appeal*
5 *as provided in subsection (i). Within 60 days of a de-*
6 *cision which denies an appeal, or within 150 days*
7 *from the date of notification of violation by the Sec-*
8 *retary if no appeal is filed, the Secretary shall pros-*
9 *ecute a civil action in accordance with paragraph (3)*
10 *or rescind such order and be estopped from any fur-*
11 *ther enforcement proceedings for the same asserted*
12 *violation.*

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

1 “(4) *CIVIL PENALTIES.*—Any person who violates
2 any condition or limitation in a permit issued by the
3 Secretary under this section and any person who vio-
4 lates any order issued by the Secretary under para-
5 graph (1) shall be subject to a civil penalty not to ex-
6 ceed \$25,000 per day for each violation commencing
7 on expiration of the compliance period if no appeal
8 is filed or on the 30th day following the date of the
9 denial of an appeal of such violation. The amount of
10 the penalty imposed per day shall be in proportion to
11 the scale or scope of the project. In determining the
12 amount of a civil penalty, the court shall consider the
13 seriousness of the violation or violations, the economic
14 benefit (if any) resulting from the violation, any his-
15 tory of such violations, any good-faith efforts to com-
16 ply with the applicable requirements, the economic
17 impact of the penalty on the violator, and such other
18 matters as justice may require.

19 “(5) *CRIMINAL PENALTIES.*—If any person
20 knowingly and willfully violates any condition or
21 limitation in a permit issued by the Secretary under
22 this section or knowingly and willfully violates an
23 order issued by the Secretary under paragraph (1)
24 and has been notified of the issuance of such order
25 under paragraph (2) and if such violation has re-

1 *sulted in actual degradation of the environment, such*
2 *person shall be punished by a fine of not less than*
3 *\$5,000 nor more than \$50,000 per day of violation,*
4 *or by imprisonment for not more than 3 years, or by*
5 *both. If a conviction of a person is for a violation*
6 *committed after a first conviction of such person*
7 *under this paragraph, punishment shall be by a fine*
8 *of not more than \$100,000 per day of violation, or*
9 *imprisonment of not more than 6 years, or by both.*
10 *An action for imposition of a criminal penalty under*
11 *this paragraph may only be brought by the Attorney*
12 *General.*

13 *“(1) STATE REGULATION.—*

14 *“(1) SUBMISSION OF PROPOSED STATE PRO-*
15 *GRAM.—The Governor of any State desiring to ad-*
16 *minister its own individual or general permit pro-*
17 *gram for some or all of the activities covered by this*
18 *section within any geographical region within its ju-*
19 *risdiction may submit to the Secretary a description*
20 *of the program it proposes to establish and administer*
21 *under State law or under an interstate compact. In*
22 *addition, such State shall submit a statement from*
23 *the chief legal officer in the case of the State or inter-*
24 *state agency, that the laws of such State, or the inter-*

1 *state compact, as the case may be, provide adequate*
2 *authority to carry out the described program.*

3 *“(2) STATE AUTHORITIES REQUIRED FOR AP-*
4 *PROVAL.—Not later than 1 year after the date of the*
5 *receipt by the Secretary of a program and statement*
6 *submitted by any State under paragraph (1), the Sec-*
7 *retary shall determine whether such State has the fol-*
8 *lowing authority with respect to the issuance of per-*
9 *mits pursuant to such program—*

10 *“(A) to issue permits which—*

11 *“(i) apply, and assure compliance*
12 *with, any applicable requirements of this*
13 *section; and*

14 *“(ii) can be terminated or modified for*
15 *cause, including—*

16 *“(I) violation of any condition of*
17 *the permit;*

18 *“(II) obtaining a permit by mis-*
19 *representation, or failure to disclose*
20 *fully all relevant facts; or*

21 *“(III) change in any condition*
22 *that requires either a temporary or*
23 *permanent reduction or elimination*
24 *of the permitted activity;*

1 “(B) to issue permits which apply, and en-
2 sure compliance with, all applicable require-
3 ments of section 308 of this Act or to inspect,
4 monitor, enter, and require reports to at least the
5 same extent as required in section 308 of this
6 Act;

7 “(C) to ensure that the public, and any
8 other State the waters of which may be affected,
9 receive notice of each application for a permit
10 and to provide an opportunity for public hear-
11 ing before a ruling on each such application;

12 “(D) to ensure that the Secretary receives
13 notice of each application for a permit and that,
14 prior to any action by the State, both the appli-
15 cant for the permit and the State have received
16 from the Secretary information with respect to
17 any advance classification applicable to wet-
18 lands that are the subject of such application;

19 “(E) to ensure that any State (other than
20 the permitting State) whose waters may be af-
21 fected by the issuance of a permit may submit
22 written recommendation to the permitting State
23 with respect to any permit application and, if
24 any part of such written recommendations are
25 not accepted by the permitting State, that the

1 *permitting State will notify such affected State*
2 *(and the Secretary) in writing of its failure to*
3 *so accept such recommendations together with its*
4 *reasons for doing so; and*

5 *“(F) to abate violations of the permit or the*
6 *permit program, including civil and criminal*
7 *penalties and other ways and means of enforce-*
8 *ment.*

9 *“(3) APPROVAL; RESUBMISSION.—If, with respect*
10 *to a State program submitted under paragraph (1) of*
11 *this section, the Secretary determines that the State—*

12 *“(A) has the authority set forth in para-*
13 *graph (2), the Secretary shall approve the pro-*
14 *gram and so notify such State and suspend the*
15 *issuance of permits under subsection (b) for ac-*
16 *tivities with respect to which a permit may be*
17 *issued pursuant to the State program; or*

18 *“(B) does not have the authority set forth in*
19 *paragraph (2) of this subsection, the Secretary*
20 *shall so notify such State and provide a descrip-*
21 *tion of the revisions or modifications necessary*
22 *so that the State may resubmit the program for*
23 *a determination by the Secretary under this sub-*
24 *section.*

1 “(4) *EFFECT OF FAILURE OF SECRETARY TO*
2 *MAKE TIMELY DECISION.—If the Secretary fails to*
3 *make a determination with respect to any program*
4 *submitted by a State under this subsection within 1*
5 *year after the date of receipt of the program, the pro-*
6 *gram shall be treated as being approved pursuant to*
7 *paragraph (3)(A) and the Secretary shall so notify*
8 *the State and suspend the issuance of permits under*
9 *subsection (b) for activities with respect to which a*
10 *permit may be issued by the State.*

11 “(5) *TRANSFER OF PENDING APPLICATIONS FOR*
12 *PERMITS.—If the Secretary approves a State permit*
13 *program under paragraph (3)(A) or (4), the Sec-*
14 *retary shall transfer any applications for permits*
15 *pending before the Secretary for activities with re-*
16 *spect to which a permit may be issued pursuant to*
17 *the State program to the State for appropriate action.*

18 “(6) *GENERAL PERMITS.—Upon notification*
19 *from a State with a permit program approved under*
20 *this subsection that such State intends to administer*
21 *and enforce the terms and conditions of a general per-*
22 *mit issued by the Secretary under subsection (e) with*
23 *respect to activities in the State to which such general*
24 *permit applies, the Secretary shall suspend the ad-*

1 *ministration and enforcement of such general permit*
2 *with respect to such activities.*

3 “(7) *REVIEW BY SECRETARY.*—Every 5 years
4 *after approval of a State administered program*
5 *under paragraph (3)(A), the Secretary shall review*
6 *the program to determine whether it is being admin-*
7 *istered in accordance with this section. If, on the*
8 *basis of such review, the Secretary finds that a State*
9 *is not administering its program in accordance with*
10 *this section or if the Secretary determines based on*
11 *clear and convincing evidence after a public hearing*
12 *that a State is not administering its program in ac-*
13 *cordance with this section and that substantial ad-*
14 *verse impacts to wetlands or waters of the United*
15 *States are imminent, the Secretary shall notify the*
16 *State and, if appropriate corrective action is not*
17 *taken within a reasonable time, not to exceed 90 days*
18 *after the date of the receipt of such notification, the*
19 *Secretary shall—*

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

23 “(B) *resume the program for the issuance of*
24 *permits under subsections (b) and (e) for all ac-*
25 *tivities with respect to which the State was issu-*

1 *ing permits until such time as the Secretary*
2 *makes the determination described in paragraph*
3 *(2) and the State again has an approved pro-*
4 *gram.*

5 *“(m) MISCELLANEOUS PROVISIONS.—*

6 *“(1) STATE AUTHORITY TO CONTROL DIS-*
7 *CHARGES.—Nothing in this section shall preclude or*
8 *deny the right of any State or interstate agency to*
9 *control activities in waters within the jurisdiction of*
10 *such State, including any activity of any Federal*
11 *agency, and each such agency shall comply with such*
12 *State or interstate requirements both substantive and*
13 *procedural to control such activities to the same ex-*
14 *tent that any person is subject to such requirements.*
15 *This section shall not be construed as affecting or im-*
16 *pairing the authority of the Secretary to maintain*
17 *navigation.*

18 *“(2) AVAILABILITY TO PUBLIC.—A copy of each*
19 *permit application and each permit issued under this*
20 *section shall be available to the public. Such permit*
21 *application or portion thereof shall further be avail-*
22 *able on request for the purpose of reproduction.*

23 *“(3) PUBLICATION IN FEDERAL REGISTER.—The*
24 *Secretary shall have published in the Federal Register*
25 *all memoranda of agreement, regulatory guidance let-*

1 *ters, and other guidance documents of general appli-*
2 *cability to implementation of this section at the time*
3 *they are distributed to agency regional or field offices.*
4 *In addition, the Secretary shall prepare, update on a*
5 *biennial basis and make available to the public for*
6 *purchase at cost—*

7 *“(A) an indexed publication containing all*
8 *Federal regulations, general permits, memoranda*
9 *of agreement, regulatory guidance letters, and*
10 *other guidance documents relevant to the permit-*
11 *ting of activities pursuant to this section; and*

12 *“(B) information to enable the general pub-*
13 *lic to understand the delineation of wetlands, the*
14 *permitting requirements referred to in subsection*
15 *(e), wetlands restoration and enhancement, wet-*
16 *lands functions, available nonregulatory pro-*
17 *grams to conserve and restore wetlands, and*
18 *other matters that the Secretary considers rel-*
19 *evant.*

20 *“(4) COMPLIANCE.—*

21 *“(A) COMPLIANCE WITH PERMIT.—Compli-*
22 *ance with a permit issued pursuant to this sec-*
23 *tion, including any activity carried out pursu-*
24 *ant to a general permit issued under this section,*
25 *shall be deemed in compliance, for purposes of*

1 *sections 309 and 505, with sections 301, 307,*
2 *and 403.*

3 “(B) *CRANBERRY PRODUCTION.*—Activities
4 *associated with expansion, improvement, or*
5 *modification of existing cranberry production*
6 *operations shall be deemed in compliance, for*
7 *purposes of sections 309 and 505, with section*
8 *301, if—*

9 *“(i) the activity does not result in the*
10 *modification of more than 10 acres of wet-*
11 *lands per operator per year and the modi-*
12 *fied wetlands (other than where dikes and*
13 *other necessary facilities are placed) remain*
14 *as wetlands or other waters of the United*
15 *States; or*

16 *“(ii) the activity is required by any*
17 *State or Federal water quality program.*

18 “(5) *LIMITATION ON FEES.*—Any fee charged in
19 *connection with the delineation or classification of*
20 *wetlands, the submission or processing of an applica-*
21 *tion for a permit authorizing an activity in wetlands*
22 *or waters of the United States, or any other action*
23 *taken in compliance with the requirements of this sec-*
24 *tion (other than fines for violations under subsection*

1 (k) shall not exceed the amount in effect for such fee
2 on February 15, 1995.

3 “(6) *BALANCED IMPLEMENTATION.*—

4 “(A) *IN GENERAL.*—In implementing his or
5 her responsibilities under the regulatory program
6 under this section, the Secretary shall balance
7 the objective of conserving functioning wetlands
8 with the objective of ensuring continued economic
9 growth, providing essential infrastructure, main-
10 taining strong State and local tax bases, and
11 protecting against the diminishment of the use
12 and value of privately owned property.

13 “(B) *MINIMIZATION OF ADVERSE EFFECTS*
14 *ON PRIVATE PROPERTY.*—In carrying out this
15 section, the Secretary and the heads of all other
16 Federal agencies shall seek in all actions to min-
17 imize the adverse effects of the regulatory pro-
18 gram under this section on the use and value of
19 privately owned property.

20 “(7) *PROCEDURES FOR EMERGENCIES.*—The
21 Secretary shall develop procedures for facilitating ac-
22 tions under this section that are necessary to respond
23 to emergency conditions (including flood events and
24 other emergency situations) which may involve loss of
25 life and property damage. Such procedures shall ad-

1 *dress circumstances requiring expedited approvals as*
2 *well as circumstances requiring no formal approval*
3 *under this section.*

4 “(8) *USE OF PROPERTY.*—*For purposes of this*
5 *section, a use of property is limited by an agency ac-*
6 *tion if a particular legal right to use that property*
7 *no longer exists because of the action.*

8 “(9) *LIMITATION ON CLASSIFICATION OF CER-*
9 *TAIN WATERS.*—*For purposes of this section, no water*
10 *of the United States or wetland shall be subject to this*
11 *section based solely on the fact that migratory birds*
12 *use or could use such water or wetland.*

13 “(10) *TRANSITION RULES.*—

14 “(A) *PERMIT REQUIRED.*—*After the effective*
15 *date of this section under section 806 of the Com-*
16 *prehensive Wetlands Conservation and Manage-*
17 *ment Act of 1995, no permit for any activity in*
18 *wetlands or waters of the United States may be*
19 *issued except in accordance with this section.*
20 *Any application for a permit for such an activ-*
21 *ity pending under this section on such effective*
22 *date shall be deemed to be an application for a*
23 *permit under this section.*

24 “(B) *PRIOR PERMITS.*—*Any permit for an*
25 *activity in wetlands or waters of the United*

1 *States issued under this section prior to the effec-*
2 *tive date referred to in subparagraph (A) shall*
3 *be deemed to be a permit under this section and*
4 *shall continue in force and effect for the term*
5 *of the permit unless revoked, modified, sus-*
6 *pending, or canceled in accordance with this sec-*
7 *tion.*

8 “(C) *REEVALUATION.*—

9 “(i) *PETITION.*—Any person holding a
10 *permit for an activity in wetlands or water*
11 *of the United States on the effective date re-*
12 *ferred to in subparagraph (A) may petition,*
13 *after such effective date, the Secretary for*
14 *reevaluation of any decision made before*
15 *such effective date concerning (I) a deter-*
16 *mination of regulatory jurisdiction under*
17 *this section, or (II) any condition imposed*
18 *under the permit. Upon receipt of a petition*
19 *for reevaluation, the Secretary shall conduct*
20 *the reevaluation in accordance with the pro-*
21 *visions of this section.*

22 “(ii) *MODIFICATION OF PERMIT.*—If
23 *the Secretary finds that the provisions of*
24 *this section apply with respect to activities*
25 *and lands which are subject to the permit,*

1 *the Secretary shall modify, revoke, suspend,*
2 *cancel, or continue the permit as appro-*
3 *priate in accordance with the provisions of*
4 *this section; except that no compensation*
5 *shall be awarded under this section to any*
6 *person as a result of reevaluation pursuant*
7 *to this subparagraph and, if the permit cov-*
8 *ers activities in type A wetlands, the permit*
9 *shall continue in effect without modifica-*
10 *tion.*

11 “(iii) *PROCEDURE.*—*The reevaluation*
12 *shall be carried out in accordance with time*
13 *limits set forth in subsection (e)(5) and*
14 *shall be subject to administrative appeal*
15 *under subsection (i).*

16 “(D) *PREVIOUSLY DENIED PERMITS.*—*No*
17 *permit shall be issued under this section, no ex-*
18 *emption shall be available under subsection (f),*
19 *and no exception shall be available under sub-*
20 *section (g)(1)(B), for any activity for which a*
21 *permit has previously been denied by the Sec-*
22 *retary on more than one occasion unless such ac-*
23 *tivity—*

24 *“(i) has been approved by the affected*
25 *State, county, and local government within*

1 *the boundaries of which the activity is pro-*
2 *posed;*

3 “(ii) *in the case of unincorporated*
4 *land, has been approved by all local govern-*
5 *ments within 1 mile of the proposed activ-*
6 *ity; and*

7 “(iii) *would result in a net improve-*
8 *ment to water quality at the site of such ac-*
9 *tivity.*

10 “(11) *DEFINITIONS.—In this section the follow-*
11 *ing definitions apply:*

12 “(A) *ACTIVITY IN WETLANDS OR WATERS OF*
13 *THE UNITED STATES.—The term ‘activity in*
14 *wetlands or waters of the United States’*
15 *means—*

16 “(i) *the discharge of dredged or fill ma-*
17 *terial into waters of the United States, in-*
18 *cluding wetlands at a specific disposal site;*
19 *or*

20 “(ii) *the draining, channelization, or*
21 *excavation of wetlands.*

22 “(B) *AGENCY.—The term ‘agency’ has the*
23 *meaning given that term in section 551 of title*
24 *5, United States Code.*

1 “(C) *AGENCY ACTION*.—The term ‘agency
2 *action*’ has the meaning given that term in sec-
3 *tion 551 of title 5, United States Code, but also*
4 *includes the making of a grant to a public au-*
5 *thority conditioned upon an action by the recipi-*
6 *ent that would constitute a limitation if done di-*
7 *rectly by the agency.*

8 “(D) *AGRICULTURAL LAND*.—The term ‘ag-
9 *ricultural land*’ means *cropland, pastureland,*
10 *native pasture, rangeland, an orchard, a vine-*
11 *yard, nonindustrial forest land, an area that*
12 *supports a water dependent crop (including*
13 *cranberries, taro, watercress, or rice), and any*
14 *other land used to produce or support the pro-*
15 *duction of an annual or perennial crop (includ-*
16 *ing forage or hay), aquaculture product, nursery*
17 *product, or wetland crop or the production of*
18 *livestock.*

19 “(E) *CONSERVED WETLANDS*.—The term
20 ‘*conserved wetlands*’ means *wetlands that are lo-*
21 *cated in the National Park System, National*
22 *Wildlife Refuge System, National Wilderness*
23 *System, the Wild and Scenic River System, and*
24 *other similar Federal conservation systems, com-*
25 *bined with wetlands located in comparable types*

1 *of conservation systems established under State*
2 *and local authority within State and local land*
3 *use systems.*

4 “(F) *ECONOMIC BASE LANDS.*—*The term*
5 *‘economic base lands’ means lands conveyed to,*
6 *selected by, or owned by Alaska Native entities*
7 *pursuant to the Alaska Native Claims Settlement*
8 *Act, Public Law 92–203 or the Alaska Native Al-*
9 *lotment Act of 1906 (34 Stat. 197), and lands*
10 *conveyed to, selected by, or owned by the State*
11 *of Alaska pursuant to the Alaska Statehood Act,*
12 *Public Law 85–508.*

13 “(G) *FAIR MARKET VALUE.*—*The term ‘fair*
14 *market value’ means the most probable price at*
15 *which property would change hands, in a com-*
16 *petitive and open market under all conditions*
17 *requisite to a fair sale, between a willing buyer*
18 *and a willing seller, neither being under any*
19 *compulsion to buy or sell and both having rea-*
20 *sonable knowledge of relevant facts, at the time*
21 *the agency action occurs.*

22 “(H) *LAW OF A STATE.*—*The term ‘law of*
23 *a State’ includes the law of a political subdivi-*
24 *sion of a State.*

1 “(I) *MITIGATION BANK*.—The term ‘mitiga-
2 tion bank’ means a wetlands restoration, cre-
3 ation, enhancement, or preservation project un-
4 dertaken by one or more parties, including pri-
5 vate and public entities, expressly for the pur-
6 pose of providing mitigation compensation cred-
7 its to offset adverse impacts to wetlands or other
8 waters of the United States authorized by the
9 terms of permits allowing activities in such wet-
10 lands or waters.

11 “(J) *NAVIGATIONAL DREDGING*.—The term
12 ‘navigational dredging’ means the dredging of
13 ports, waterways, and inland harbors, including
14 berthing areas and local access channels appur-
15 tenant to a Federal navigation channel.

16 “(K) *PROPERTY*.—The term ‘property’
17 means land and includes the right to use or re-
18 ceive water.

19 “(L) *SECRETARY*.—The term ‘Secretary’
20 means the Secretary of the Army.

21 “(M) *STATE WITH SUBSTANTIAL CON-*
22 *SERVED WETLANDS AREAS*.—The term ‘State
23 with substantial conserved wetlands areas’ means
24 any State which—

1 “(i) contains at least 10 areas of wet-
2 lands for each acre of wetlands filled,
3 drained, or otherwise converted within such
4 State (based upon wetlands loss statistics
5 reported in the 1990 United States Fish
6 and Wildlife Service Wetlands Trends re-
7 port to Congress entitled ‘Wetlands Losses
8 in the United States 1780’s to 1980’s’); or

9 “(ii) the Secretary of the Army deter-
10 mines has sufficient conserved wetlands
11 areas to provided adequate wetlands con-
12 servation in such State, based on the poli-
13 cies set forth in this Act.

14 “(N) WETLANDS.—The term ‘wetlands’
15 means those lands that meet the criteria for de-
16 lineation of lands as wetlands set forth in sub-
17 section (g).”.

18 **SEC. 804. DEFINITIONS.**

19 Section 502 (33 U.S.C. 1362) is further amended—

20 (1) in paragraph (6)—

21 (A) by striking “dredged spoil,”;

22 (B) by striking “or (B)” and inserting
23 “(B)”; and

24 (C) by inserting before the period at the end
25 “; and (C) dredged or fill material”; and

1 (2) by adding at the end thereof the following
2 new paragraphs:

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

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

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

17 “(31) The term ‘fastlands’ means lands located behind
18 legally constituted man-made structures or natural forma-
19 tions, such as levees constructed and maintained to permit
20 the utilization of such lands for commercial, industrial, or
21 residential purposes consistent with local land use planning
22 requirements.

23 “(32) The term ‘wetlands functions’ means the roles
24 wetlands serve, including flood water storage, flood water
25 conveyance, ground water recharge, erosion control, wave

1 *attenuation, water quality protection, scenic and aesthetic*
2 *use, food chain support, fisheries, wetlands plant habitat,*
3 *aquatic habitat, and habitat for wetland dependent wildlife.*

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

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

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

18 “(36) *The term ‘mitigation banking’ means wetlands*
19 *restoration, enhancement, preservation or creation for the*
20 *purpose of providing compensation for wetland degradation*
21 *or loss.*

22 “(37) *The term ‘normal farming, silviculture, aqua-*
23 *culture and ranching activities’ means normal practices*
24 *identified as such by the Secretary of Agriculture, in con-*
25 *sultation with the Cooperative Extension Service for each*

1 *State and the land grant university system and agricul-*
2 *tural colleges of the State, taking into account existing prac-*
3 *tices and such other practices as may be identified in con-*
4 *sultation with the affected industry or community.*

5 “(38) The term ‘prior converted cropland’ means any
6 agricultural land that was manipulated (by drainage or
7 other physical alteration to remove excess water from the
8 land) or used for the production of any annual or perennial
9 agricultural crop (including forage or hay), aquacultural
10 product, nursery product or wetlands crop, or the produc-
11 tion of livestock before December 23, 1985.

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

17 “(40) The term ‘temporary impact’ means the disturb-
18 ance or alteration of wetlands caused by activities under
19 circumstances in which, within 3 years following the com-
20 mencement 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, that
24 without further human action, such wetlands will re-

1 *turn to the conditions in existence prior to the com-*
2 *mencement of such activity.*

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

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

7 (a) *VIOLATION.—Section 301(a) (33 U.S.C. 1311(a))*
8 *is amended—*

9 (1) *by striking “402, and 404” and inserting*
10 *“and 402”; and*

11 (2) *by adding at the end the following: “Except*
12 *as in compliance with this section and section 404,*
13 *the undertaking of any activity in wetlands or waters*
14 *of the United States shall be unlawful.”.*

15 (b) *FEDERAL ENFORCEMENT.—Section 309 (33 U.S.C.*
16 *1319) is amended—*

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

18 (2) *in subsection (a)(3) by striking “or in a per-*
19 *mit issued under section 404 of this Act by a State”;*

20 (3) *in each of subsections (c)(1)(A) and (c)(2)(A)*
21 *by striking “or in a permit” and all that follows*
22 *through “State;” and inserting a semicolon;*

23 (4) *in subsection (c)(3)(A) by striking “or in a*
24 *permit” and all that follows through “State, and”*
25 *and inserting “and”;*

1 (5) by adding at the end of subsection (c) the fol-
2 lowing:

3 “(8) *TREATMENT OF CERTAIN VIOLATIONS.*—Any
4 person who violates section 301 with respect to an ac-
5 tivity in wetlands or waters of the United States for
6 which a permit is required under section 404 shall
7 not be subject to punishment under this subsection but
8 shall be subject to punishment under section
9 404(k)(5).”;

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

12 (7) by adding at the end of subsection (d) the fol-
13 lowing: “Any person who violates section 301 with re-
14 spect to an activity in wetlands or waters of the
15 United States for which a permit is required under
16 section 404 shall not be subject to a civil penalty
17 under this subsection but shall be subject to a civil
18 penalty under section 404(k)(4).”;

19 (8) in subsection (g)(1)—

20 (A) by striking “—” and all that follows
21 through “(A)”;

22 (B) by striking “or in a permit issued
23 under section 404 by a State, or”;

1 (C) by striking “(B)” and all that follows
2 through “as the case may be,” and inserting “the
3 Administrator”;

4 (9) by adding at the end of subsection (g) the fol-
5 lowing:

6 “(12) TREATMENT OF CERTAIN VIOLATIONS.—
7 Any person who violates section 301 with respect to
8 an activity in wetlands or waters of the United States
9 for which a permit is required under section 404 shall
10 not be subject to assessment of a civil penalty under
11 this subsection but shall be subject to assessment of a
12 civil penalty under section 404(k)(4).”;

13 (10) by striking “or Secretary”, “or the Sec-
14 retary”, “or the Secretary, as the case may be,” “or
15 Secretary’s”, and “and the Secretary” each place they
16 appear; and

17 (11) in subsection (g)(9)(B) by inserting a
18 comma after “Administrator”.

19 **SEC. 806. EFFECTIVE DATE.**

20 This title, including the amendments made by this
21 title, shall take effect on the 90th day following the date
22 of the enactment of this Act.

1 **TITLE IX—NAVIGATIONAL**
2 **DREDGING**

3 **SEC. 901. REFERENCES TO ACT.**

4 *Except as otherwise expressly provided, whenever in*
5 *this title an amendment or repeal is expressed in terms of*
6 *an amendment to, or repeal of, a section or other provision,*
7 *the reference shall be considered to be made to a section or*
8 *other provision of the Marine Protection, Research, and*
9 *Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.).*

10 **SEC. 902. OCEAN DUMPING PERMITS.**

11 *(a) ISSUANCE OF PERMITS.—Section 102 (33 U.S.C.*
12 *1412) is amended—*

13 *(1) in the section heading by striking “ENVIRON-*
14 *MENTAL PROTECTION AGENCY”; and*

15 *(2) in subsection (a)—*

16 *(A) by striking “Administrator” each place*
17 *it appears and inserting “Secretary”;*

18 *(B) by striking paragraph (G) and redesign-*
19 *ating paragraphs (A), (B), (C), (D), (E), (F),*
20 *(H), and (I) as paragraphs (1) through (8), re-*
21 *spectively;*

22 *(C) in paragraph (4), as so redesignated, by*
23 *redesignating subparagraphs (i) through (iii) as*
24 *subparagraphs (A) through (C), respectively; and*

1 (D) by striking the first and second sen-
2 tences following the indented paragraphs.

3 (b) *CATEGORIES OF PERMITS.*—Section 102(b) (33
4 *U.S.C. 1412(b)*) is amended by striking “Administrator”
5 and inserting “Secretary”.

6 (c) *DESIGNATION OF SITES.*—Section 102(c) (33
7 *U.S.C. 1412(c)*) is amended—

8 (1) by striking “Administrator” each place it
9 appears and inserting “Secretary”; and

10 (2) in paragraph (3) by striking “Secretary”
11 each place it appears and inserting “Administrator”.

12 (d) *SPECIAL RULES.*—Sections 102(d) and 102(e) (33
13 *U.S.C. 1412(d)* and 1412(e)) are amended by striking “Ad-
14 ministrator” each place it appears and inserting “Sec-
15 retary”.

16 **SEC. 903. DREDGED MATERIAL PERMITS.**

17 (a) *DISPOSAL SITES.*—Section 103 (33 *U.S.C. 1413*)
18 is amended—

19 (1) in the section heading by striking “CORPS OF
20 *ENGINEERS*” and inserting “DREDGED MATERIAL”;
21 and

22 (2) in subsection (b)—

23 (A) by striking “by the Administrator” each
24 place it appears;

1 (B) by striking “, with the concurrence of
2 the Administrator,”; and

3 (C) in paragraph (3) by striking “Adminis-
4 trator” and inserting “Secretary”.

5 (b) *CONSULTATION WITH THE ADMINISTRATOR.*—Sec-
6 tion 103(c) (33 U.S.C. 1413(c) is amended to read as fol-
7 lows:

8 “(c) *CONSULTATION WITH THE ADMINISTRATOR.*—
9 Prior to issuing a permit to any person under this section,
10 the Secretary shall first consult with the Administrator.”.

11 (c) *WAIVERS.*—Section 103(d) (33 U.S.C. 1413(d)) is
12 amended by striking “request a waiver” and all that follows
13 through the period at the end and inserting “grant a waiv-
14 er.”.

15 **SEC. 904. PERMIT CONDITIONS.**

16 Section 104 (33 U.S.C. 1414) is amended—

17 (1) by striking “Administrator or the Secretary,
18 as the case may be,” each place it appears and insert-
19 ing “Secretary”;

20 (2) in subsection (a) by inserting a comma be-
21 fore “after consultation”;

22 (3) in subsection (h)—

23 (A) by striking “Administrator of the Envi-
24 ronmental Protection Agency” and inserting
25 “Secretary”; and

1 (B) in the last sentence by striking “Admin-
2 istrator determines” and inserting “Secretary
3 determines”; and

4 (4) in subsection (i)—

5 (A) by striking “Administrator” each place
6 it appears and inserting “Secretary”;

7 (B) in paragraph (3) by striking “Merchant
8 Marine and Fisheries” and inserting “Transpor-
9 tation and Infrastructure”; and

10 (C) in paragraph (4)(D) by striking “of the
11 Environmental Protection Agency”.

12 **SEC. 905. SPECIAL PROVISIONS REGARDING CERTAIN**
13 **DUMPING SITES.**

14 Section 104A (33 U.S.C. 1414a) is amended by strik-
15 ing “Administrator” each place it appears and inserting
16 “Secretary”.

17 **SEC. 906. REFERENCES TO ADMINISTRATOR.**

18 With respect to any function transferred from the Ad-
19 ministrato r to the Secretary of the Army by an amendment
20 made by this title and exercised after the effective date of
21 such transfer, reference in any Federal law to the Adminis-
22 trator shall be considered to refer to the Secretary of the
23 Army.

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