§ 1311. Effluent limitations

(a) Illegality of pollutant discharges except in compliance with law

Except as in compliance with this section and sections 1312, 1316, 1317, 1326, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

(b) Timetable for achievement of objectives

In order to carry out the objective of this chapter there shall be achieved—

(1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 1383 of this title prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title; or

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

(2)(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title;


(C) with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1988;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 1317 of this title which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1988;

(E) as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989, with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 1314(a)(4) of this title shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(4) of this title; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than 3 years after the date
such limitations are established, and in no case later than March 31, 1989.

(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989; and

(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 1342(a)(1) of this title in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989.

(c) Modification of timetable

The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

(d) Review and revision of effluent limitations

Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

(e) All point discharge source application of effluent limitations

Effluent limitations established pursuant to this section or section 1312 of this title shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this chapter.

(f) Illegality of discharge of radiological, chemical, or biological warfare agents, high-level radioactive waste, or medical waste

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste, into the navigable waters.

(g) Modifications for certain nonconventional pollutants

(1) General authority

The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, and total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F) of this section) and any other pollutant which the Administrator lists under paragraph (4) of this subsection.

(2) Requirements for granting modifications

A modification under this subsection shall be granted only upon a showing by the owner or operator of a point source satisfactory to the Administrator that—

(A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistence in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(3) Limitation on authority to apply for subsection (c) modification

If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time period as he is eligible to apply for a modification under this subsection.

(4) Procedures for listing additional pollutants

(A) General authority

Upon petition of any person, the Administrator may add any pollutant to the list of pollutants for which modification under this section is authorized (except for pollutants identified pursuant to section 1314(a)(4) of this title, toxic pollutants subject to section 1317(a) of this title, and the thermal component of discharges) in accordance with the provisions of this paragraph.

(B) Requirements for listing

(i) Sufficient information

The person petitioning for listing of an additional pollutant under this subsection shall submit to the Administrator sufficient information to make the determinations required by this subparagraph.

(ii) Toxic criteria determination

The Administrator shall determine whether or not the pollutant meets the criteria for listing as a toxic pollutant under section 1317(a) of this title.

(iii) Listing as toxic pollutant

If the Administrator determines that the pollutant meets the criteria for listing as
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The State, may issue a permit under section 1342 of this title which modifies the requirements of the Administrator that—

(iv) Nonconventional criteria determination

If the Administrator determines that the pollutant does not meet the criteria for listing as a toxic pollutant under such section and determines that adequate test methods and sufficient data are available to make the determinations required by paragraph (2) of this subsection with respect to the pollutant, the Administrator shall add the pollutant to the list of pollutants specified in paragraph (1) of this subsection for which modifications are authorized under this subsection.

(C) Requirements for filing of petitions

A petition for listing of a pollutant under this paragraph—

(i) must be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title;

(ii) may be filed before promulgation of such guideline; and

(iii) may be filed with an application for a modification under paragraph (1) with respect to the discharge of such pollutant.

(D) Deadline for approval of petition

A decision to add a pollutant to the list of pollutants for which modifications under this subsection are authorized must be made within 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title.

(E) Burden of proof

The burden of proof for making the determinations under subparagraph (B) shall be on the petitioner.

(5) Removal of pollutants

The Administrator may remove any pollutant from the list of pollutants for which modifications under this subsection are authorized must be made within 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title.

(h) Modification of secondary treatment requirements

The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of the Administrator that—

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 1314(a)(6) of this title;

(2) the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;

(7) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(8) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 1314(a)(1) of this title after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 1251(a)(2) of this title. For the purposes of paragraph (9), "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the
suspended solids in the treatment works influen-
tant, and disinfection, where appropriate. A mu-
icipality which applies secondary treatment
shall be eligible to receive a permit pursuant to
this subsection which modifies the requirements
of subsection (b)(1)(B) of this section with re-
spect to the discharge of any pollutant from any
treatment works owned by such municipality
into marine waters. No permit issued under this
subsection shall authorize the discharge of sew-
age sludge into marine waters. In order for a
permit to be issued under this subsection for the
discharge of a pollutant into marine waters,
such marine waters must exhibit characteristics
assuring that water providing dilution does not
contain significant amounts of previously dis-
charged effluent from such treatment works. No
permit issued under this subsection shall au-
thorize the discharge of any pollutant into sa-
line estuarine waters which at the time of appli-
cation do not support a balanced indigenous
population of shellfish, fish and wildlife, or
allow recreation in and on the waters or which
exhibit ambient water quality below applicable
water quality standards adopted for the protec-
tion of public water supplies, shellfish, fish and
wildlife or recreational activities or such other
standards necessary to assure support and pro-
tection of such uses. The prohibition contained
in the preceding sentence shall apply without
regard to the presence or absence of a causal
relationship between such characteristics and the
applicant’s current or proposed discharge. Not-
withstanding any other provisions of this sub-
section, no permit may be issued under this sub-
section for discharge of a pollutant into the New
York Bight Apex consisting of the ocean waters
of the Atlantic Ocean westward of 73 degrees 30
minutes west longitude and northward of 40 de-
grees 10 minutes north latitude.

(i) Municipal time extensions

(1) Where construction is required in order for
a planned or existing publicly owned treatment
works to achieve limitations under subsection
(b)(1)(B) or (b)(1)(C) of this section, but (A) con-
struction cannot be completed within the time
required in such subsection, or (B) the United
States has failed to make financial assistance
under this chapter available in time to achieve
such limitations by the time specified in such
subsection, the owner or operator of such treat-
ment works may request the Administrator (or
if appropriate the State) to issue a permit pur-
suant to section 1342 of this title or to modify a
permit issued pursuant to that section to extend
such time for compliance. Any such request
shall be filed with the Administrator (or if ap-
propriate the State) within 180 days after Febru-
ary 4, 1987. The Administrator (or if appro-
riate the State) may grant such request and
issue or modify such a permit, which shall con-
tain a schedule of compliance for the publicly
owned treatment works based on the earliest
date by which such financial assistance will be
available from the United States and construc-
tion can be completed, but in no event later
than July 1, 1988, and shall contain such other
terms and conditions, including those necessary
to carry out subsections (b) through (g) of sec-
tion 1281 of this title, section 1317 of this title,
and such interim effluent limitations applicable
to that treatment works as the Administrator
determines are necessary to carry out the provi-
sions of this chapter.

(2)(A) Where a point source (other than a pub-
licly owned treatment works) will not achieve
the requirements of subsections (b)(1)(A) and
(b)(1)(C) of this section and

(i) if a permit issued prior to July 1, 1977, to
such point source is based upon a discharge
into a publicly owned treatment works; or
(ii) if such point source (other than a pub-
licly owned treatment works) had before July
1, 1977, a contract (enforceable against such
point source) to discharge into a publicly
owned treatment works; or
(iii) if either an application made before July
1, 1977, for a construction grant under
this chapter for a publicly owned treatment
works, or engineering or architectural plans
or working drawings made before July 1, 1977,
for a publicly owned treatment works, show
that such point source was to discharge into
such publicly owned treatment works,
and such publicly owned treatment works is
presently unable to accept such discharge with-
out construction, and in the case of a discharge
to an existing publicly owned treatment works,
such treatment works has an extension pursuant
to paragraph (1) of this subsection, the owner
of such point source may request the
Administrator (or if appropriate the State) to
issue or modify such a permit pursuant to such
section 1342 of this title to extend such time for
compliance. Any such request shall be filed with
the Administrator (or if appropriate the State)
within 180 days after December 27, 1977, or the
filing of a request by the appropriate publicly
owned treatment works under paragraph (1) of
this subsection, whichever is later. If the Ad-
ministrator (or if appropriate the State) finds
that the owner or operator of such point source
has acted in good faith, he may grant such re-
quest and issue or modify such a permit, which
shall contain a schedule of compliance for the
point source to achieve the requirements of sub-
sections (b)(1)(A) and (C) of this section and
shall contain such other terms and conditions,
including pretreatment and interim effluent
limitations and water conservation require-
ments applicable to that point source, as the
Administrator determines are necessary to
carry out the provisions of this chapter.

(B) No time modification granted by the Ad-
ministrator (or if appropriate the State) pursu-
ant to paragraph (2)(A) of this subsection shall
extend beyond the earliest date practicable for
compliance or beyond the date of any extension
granted to the appropriate publicly owned treat-
ment works pursuant to paragraph (1) of this
subsection, but in no event shall it extend be-
yond July 1, 1988; and no such time modifica-
tion shall be granted unless (i) the publicly
owned treatment works will be in operation and avail-
able to the point source before July 1, 1988, and
will meet the requirements of subsections
(b)(1)(B) and (C) of this section after receiving
the discharge from that point source; and (ii)
the point source and the publicly owned treat-
ment works have entered into an enforceable
contract requiring the point source to discharge
into the publicly owned treatment works, the owner or operator of such point source to pay the costs required under section 1284 of this title, and the publicly owned treatment works to accept the discharge from the point source; and (ii) the permit for such point source requires that point source to meet all requirements under section 1317(a) and (b) of this title during the period of such time modification.

(j) Modification procedures

(1) Any application filed under this section for a modification of the provisions of—

(A) subsection (b)(1)(B) of this section under subsection (h) of this section shall be filed not later than the 365th day which begins after December 29, 1981, except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section, may apply for a modification of subsection (b)(1)(B) of this section in its own right not later than 30 days after February 4, 1987, and except as provided in paragraph (5);

(B) subsection (b)(2)(A) of this section as it applies to pollutants identified in subsection (b)(2)(F) of this section shall be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title or not later than 270 days after December 27, 1977, whichever is later.

(2) Subject to paragraph (3) of this section, any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this chapter, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities, and that there is a substantial likelihood that the applicant will succeed on the merits of such application. In the case of any facility subject to a permit under section (h) of this section with respect to biological oxygen demand, the Administrator may condition any stay granted under this section on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

(3) Compliance requirements under subsection (g).

(A) Effect of filing.—An application for a modification under subsection (g) of this section and a petition for listing of a pollutant as a pollutant for which modifications are authorized under such subsection shall not stay the requirement that the person seeking such modification comply with all applicable effluent limitations under this chapter.

(B) Effect of disapproval.—Disapproval of an application for a modification under subsection (g) of this section shall not stay the requirement that the person seeking such modification comply with all applicable effluent limitations under this chapter.

(4) Deadline for subsection (g) decision.—An application for a modification with respect to a pollutant listed under subsection (g) of this section must be approved or disapproved not later than 365 days after the date of such filing; except that in any case in which a petition for listing such pollutant as a pollutant for which modifications are authorized under such subsection is approved, such application must be approved or disapproved not later than 365 days after the date of approval of such petition.

(5) Extension of application deadline.—

(A) In general.—In the 180-day period beginning on October 31, 1994, the city of San Diego, California, may apply for a modification pursuant to subsection (h) of this section of the requirements of subsection (b)(1)(B), (b)(2)(A), or (b)(2)(E) of this section with respect to biological oxygen demand and total suspended solids in the effluent discharged into marine waters.

(B) Application.—An application submitted under this paragraph shall include a commitment by the applicant to implement a waste water reclamation program that, at a minimum, will—

(i) achieve a system capacity of 45,000,000 gallons of reclaimed waste water per day by January 1, 2010; and

(ii) result in a reduction in the quantity of suspended solids discharged by the applicant into the marine environment during the period of the modification.

(C) Additional conditions.—The Administrator may not grant a modification pursuant to an application submitted under this paragraph unless the Administrator determines that such modification will result in removal of not less than 58 percent of the biological oxygen demand (on an annual average) and not less than 90 percent of total suspended solids (on a monthly average) in the discharge to which the application applies.

(D) Preliminary decision deadline.—The Administrator shall announce a preliminary decision on an application submitted under this paragraph not later than 1 year after the date the application is submitted.

(k) Innovative technology

In the case of any facility subject to a permit under section 1342 of this title which proposes to comply with the requirements of subsection (b)(2)(A) or (b)(2)(E) of this section by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or
by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 1342 of this title, in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) or (b)(2)(E) of this section no later than two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection, if it is also determined that such innovative system has the potential for industrywide application.

(i) Toxic pollutants

Other than as provided in subsection (n) of this section, the Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 1317(a)(1) of this title.

(m) Modification of effluent limitation requirements for point sources

(1) The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsections (b)(1)(A) and (b)(2)(E) of this section, and of section 1343 of this title, with respect to effluent limitations to the extent such limitations relate to biochemical oxygen demand and pH from discharges by an industrial discharger in such State into deep waters of the territorial seas, if the applicant demonstrates and the Administrator finds that—

(A) the facility for which modification is sought is covered at the time of the enactment of this subsection by National Pollutant Discharge Elimination System permit number CA0005894 or CA0005282;

(B) the energy and environmental costs of meeting such requirements of subsections (b)(1)(A) and (b)(2)(E) of this section and section 1343 of this title exceed by an unreasonable amount the benefits to be obtained, including the objectives of this chapter;

(C) the applicant has established a system for monitoring the impact of such discharges on a representative sample of aquatic biota;

(D) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(E) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(F) the discharge is into waters where there is strong tidal movement and other hydrological and geological characteristics which are necessary to allow compliance with this subsection and section 1251(a)(2) of this title;

(G) the applicant accepts as a condition to the permit a contractual obligation to use funds in the amount required (but not less than $250,000 per year for ten years) for research and development of water pollution control technology, including but not limited to closed cycle technology;

(H) the facts and circumstances present a unique situation which, if relief is granted, will not establish a precedent or the relaxation of the requirements of this chapter applicable to similarly situated discharges; and

(I) no owner or operator of a facility comparable to that of the applicant situated in the United States has demonstrated that it would be put at a competitive disadvantage to the applicant (or the parent company or any subsidiary thereof) as a result of the issuance of a permit under this subsection.

(2) The effluent limitations established under a permit issued under paragraph (1) shall be sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms, and to allow recreational activities in and on the water. In setting such limitations, the Administrator shall take into account any seasonal variations and the need for an adequate margin of safety, considering the lack of essential knowledge concerning the relationship between effluent limitations and water quality and the lack of essential knowledge of the effects of discharges on beneficial uses of the receiving waters.

(3) A permit under this subsection may be issued for a period not to exceed five years, and such a permit may be renewed for one additional period not to exceed five years upon a demonstration by the applicant and a finding by the Administrator at the time of application for any such renewal that the provisions of this subsection are met.

(4) The Administrator may terminate a permit issued under this subsection if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown. Provided, That if the effluent from a source with a permit issued under this subsection is contributing to a decline in ambient water quality of the receiving waters, the Administrator shall terminate such permit.

(n) Fundamentally different factors

(1) General rule

The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) of this section or section 1317(b) of this title for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that—

(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 1314(b) or 1314(g) of this title and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

(B) the application—

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8So in original. Probably should be “contractual”.
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Administrator, the applicant must comply with such effluent limitation or pretreatment standard which modifies the requirements of an effluent limitation guideline or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility; or

(ii) is based on information and supporting data referred to in clause (i) and information and supporting data the applicant did not have a reasonable opportunity to submit during such rulemaking;

(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

(D) the alternative requirement will not result in a non-water quality environmental impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

(2) **Time limit for applications**

An application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection must be submitted to the Administrator within 180 days after the date on which such limitation or standard is established or revised, as the case may be.

(3) **Time limit for decision**

The Administrator shall approve or deny by final agency action an application submitted under this subsection within 180 days after the date such application is filed with the Administrator.

(4) **Submission of information**

The Administrator may allow an applicant under this subsection to submit information and supporting data until the earlier of the date on which such application is filed with the Administrator or the last day that the Administrator has to approve or deny such application.

(5) **Treatment of pending applications**

For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on February 4, 1987, shall be treated as having been submitted to the Administrator on the 180th day following February 4, 1987. The applicant may amend the application to take into account the provisions of this subsection.

(6) **Effect of submission of application**

An application for an alternative requirement under this subsection shall not stay the applicant’s obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

(7) **Effect of denial**

If an application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection is denied by the Administrator, the applicant must comply with such limitation or standard as established or revised, as the case may be.

(8) **Reports**

By January 1, 1997, and January 1 of every odd-numbered year thereafter, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status of applications for alternative requirements which modify the requirements of effluent limitations under section 1311 or 1314 of this title or any national categorical pretreatment standard under section 1317(b) of this title filed before, on, or after February 4, 1987.

(o) **Application fees**

The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to subsections (c), (g), (i), (k), (m), and (n) of this section, section 1314(d)(4) of this title, and section 1326(a) of this title. All amounts collected by the Administrator under this subsection shall be deposited into a special fund of the Treasury entitled “Water Permits and Related Services” which shall thereafter be available for appropriation to carry out activities of the Environmental Protection Agency for which such fees were collected.

(p) **Modified permit for coal remining operations**

(1) **In general**

Subject to paragraphs (2) through (4) of this subsection, the Administrator, or the State in any case which the State has an approved permit program under section 1342(b) of this title, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level or level of iron or manganese from the remined area of any coal remining operation or with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level of iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limitations in each permit.

(2) **Limitations**

The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by, the remining operation shall exceed...
State water quality standards established under section 1313 of this title.

(3) Definitions

For purposes of this subsection—

(A) Coal remining operation

The term “coal remining operation” means a coal mining operation which begins after February 4, 1987 at a site on which coal mining was conducted before August 3, 1977.

(B) Remined area

The term “remined area” means only that area of any coal remining operation on which coal mining was conducted before August 3, 1977.

(C) Pre-existing discharge

The term “pre-existing discharge” means any discharge at the time of permit application under this subsection.

(4) Applicability of strip mining laws

Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) to any coal remining operation, including the application of such Act to suspended solids.


REFERENCES IN TEXT


AMENDMENTS

1995—Subsec. (n)(8). Pub. L. 104–66 substituted “By January 1, 1997, and January 1 of every odd-numbered year thereafter the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure for ‘Every 6 months after February 4, 1987, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation’” for “‘Every 6 months after February 4, 1987, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure for ‘Every 6 months after February 4, 1987, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation’”.

1994—Subsec. (j)(1)(A). Pub. L. 103–431, § 21, inserted before semicolon at end “; and except as provided in paragraph (5)”.


1989—Subsec. (f). Pub. L. 100–688 substituted “; any high-level radioactive waste, or any medical waste, for ‘or high-level radioactive waste’”.

1987—Subsec. (b)(2)(C). Pub. L. 100–4, § 301(a), struck out “not later than July 1, 1984,” before “with respect” and inserted “as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989 after this paragraph”.

Subsec. (b)(2)(D). Pub. L. 100–4, § 301(b), substituted “as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989” for “not later than three years after the date such limitations are established”.

Subsec. (b)(2)(E). Pub. L. 100–4, § 301(c), substituted “as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989, compliance with” for “not later than July 1, 1984.”

Subsec. (b)(2)(F). Pub. L. 100–4, § 301(d), substituted “as expeditiously as practicable but in no case” for “not” and “in no case later than March 31, 1989” for “or not later than July 1, 1984”.

Subsec. (b)(3). Pub. L. 100–4, § 301(e), added par. (3).

Subsec. (g)(1). Pub. L. 100–4, § 302(a), substituted par. (1) for introductory provisions of former par. (1) which read as follows: “The Administrator, with the concurrence of the State, shall modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge of any pollutant (other than pollutants identified pursuant to section 1314(a)(4) of this title, toxic pollutants subject to section 1317(a) of this title, and the thermal component of discharges) from any point source (upon a showing by the owner or operator of a point source satisfactory to the Administrator that—”. Subpars. (A) to (C) of former par. (1) were redesignated as subpars. (A) to (C) of par. (2).

Subsec. (g)(2). Pub. L. 100–4, § 302(a), (d)(2), inserted introductory provisions of par. (2), and by so doing, redesignated subpars. (A) to (C) of former par. (1) as subpars. (A) to (C) of par. (2), redesignated such subpar. with subpar. (A) of (4) for (4), and redesignated former par. (2) as (3).

Subsec. (g)(3). Pub. L. 100–4, § 302(a), (d)(1), redesignated former par. (2) as (3), inserted heading, and aligned par. (3) with par. (4).

Subsec. (g)(4). Pub. L. 100–4, § 302(b), added pars. (4) and (5).

Subsec. (h). Pub. L. 100–4, § 303(b)(2), (e), redesignated former provisions defining “primary or equivalent treatment” for purposes of par. (9) and provisions placing limitations on issuance of permits for discharge of pollutant into marine waters and saline estuarine waters and prohibiting issuance of permit for discharge of pollutant into New York Bight Apex.

Subsec. (j)(2). Pub. L. 100–4, § 303(a), substituted “the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources,” for “such modified requirements will not interfere”.

Subsec. (h)(3). Pub. L. 100–4, § 303(b)(1), inserted “, and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge" before semicolon at end.

Subsec. (h)(6) to (9). Pub. L. 100–4, § 303(c), (d)(1), added par. (6), redesignated former pars. (6) and (7) as (7) and (8), respectively, substituted semicolon for period at end of par. (8), and added par. (9).


Subsec. (j)(1)(A). Pub. L. 100–4, § 304(f), inserted before semicolon at end “, except that a publicly owned treatment works which prior to December 31, 1962, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (b) of this section, may apply for a modification of subsection (h) of this section in its own right not later than 30 days after February 4, 1987.”

Subsec. (j)(2). Pub. L. 100–4, § 302(c)(1), substituted “Subject to paragraph (3) of this section, any” for “Any”.

Subsec. (j)(3), (4), Pub. L. 100–4, § 302(c)(2), added pars. (3) and (4).

Subsec. (k). Pub. L. 100–4, § 305, substituted “two years after the date for compliance with such effluent
limitation which would otherwise be applicable under such subsection” for “July 1, 1987” and inserted “or (b)(2)(E)” after “(b)(2)(A)’” in two places.

Subsec. (l). Pub. L. 100–4, §306(b), substituted “Other than as provided in subsection (n) of this section, the’” for “The’”.

Subsecs. (n), (o). Pub. L. 100–4, §306(a), added subsec. (n) and (o).


1981—Subsec. (b)(2)(B). Pub. L. 97–117, §21(b), struck out part (B) which required that, not later than July 1, 1983, compliance by all publicly owned treatment works with the requirements in section 1281(g)(2)(A) of this title be achieved.

Subsec. (h). Pub. L. 97–117, §22(a) to (c), struck out in provision preceding par. (1) “in an existing discharge” after “discharge of any pollutant”, struck out part (h), which required the applicant to demonstrate to the satisfaction of the Administrator that any funds available to the owner of such treatment works under subchapter II of this chapter be used to achieve the degree of effluent reduction required by section 1281(b) and (g)(2)(A) of this title or to carry out the requirements of this subsection, and inserted in provision following part. (7) a further provision that a municipality which applies secondary treatment be eligible to receive a permit which modifies the requirements of subsec. (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters and that no permit issued under this subsection authorize the discharge of sewage sludge into marine waters.

Subsec. (i)(1), (2)(B). Pub. L. 97–117, §21(a), substituted “July 1, 1988,” for “July 1, 1983,” wherever appearing. Pub. L. 97–117, §21(b), struck out part (B) which required that, not later than July 1, 1983, compliance by all publicly owned treatment works with the requirements in section 1281(g)(2)(A) of this title be achieved.

Subsec. (j). Pub. L. 97–117, §22(d), substituted “that the 365th day which begins after December 29, 1981” for “than 270 days after December 27, 1977.”

1977—Subsec. (b)(2)(A). Pub. L. 95–217, §42(a), substituted “for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph” for “not later than July 1, 1983”.

Subsec. (b)(2)(C) to (F). Pub. L. 95–217, §42(a), added subpars. (C) to (F).


CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–4, title III, §302(e), Feb. 4, 1987, 101 Stat. 33, provided that: “The amendments made by subsection (a) [amending this section] shall not apply to those amendments which apply after the date of the enactment of this Act for a permit pursuant to subsection (b) of section 301 of the Federal Water Pollution Control Act [33 U.S.C. 1311(b)] which has been tentatively or finally approved after the date of the enactment of this Act [Feb. 4, 1987].”

Pub. L. 100–4, title III, §303(e), Feb. 4, 1987, 101 Stat. 34, provided that: “The amendments made by subsections (a), (c), (d), and (e) of this section [amending this section] shall not apply to an application for a permit under section 301(b) of the Federal Water Pollution Control Act [33 U.S.C. 1311(b)] which has been tentatively or finally approved by the Administrator before the date of the enactment of this Act [Feb. 4, 1987], except that such amendments shall apply to all renewals of such permits after such date of enactment.”

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–117, §22(e), Dec. 29, 1981, 95 Stat. 1632, provided that: “The amendment made by subsection (a) [amending this section] shall not apply to those amendments which apply after the date of the enactment of this Act for a permit pursuant to subsection (b) of section 301 of the Federal Water Pollution Control Act [33 U.S.C. 1311(b)] which modifies the requirements of subsection (b)(1)(B) of section 301 of such Act [33 U.S.C. 1311(b)(1)(B)] shall receive such permit during the one-year period which begins on the date of enactment of this Act.”

REGULATIONS

Pub. L. 100–4, title III, §301(f), Feb. 4, 1987, 101 Stat. 30, provided that: “The Administrator shall promulgate final regulations establishing effluent limitations in accordance with sections 301(b)(2)(A) and 307(b)(1) of the Federal Water Pollution Control Act [33 U.S.C. 1311(b)(2)(A), 1317(b)(1)] for all toxic pollutants referred to in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives which are discharged from the categories of point sources in accordance with the following table:

<table>
<thead>
<tr>
<th>Category</th>
<th>Date by which the final regulation shall be promulgated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organic chemicals and plastics</td>
<td>December 31, 1986.</td>
</tr>
<tr>
<td>and synthetic fibers</td>
<td>December 31, 1986.</td>
</tr>
<tr>
<td>Pesticides</td>
<td>December 31, 1986.</td>
</tr>
</tbody>
</table>

PHOSPHATE FERTILIZER EFFLUENT LIMITATION

Amendment by section 306(a), (b) of Pub. L. 100–4 not to be construed (A) to require the Administrator to permit the discharge of gyspum or gypsum waste into the navigable waters, (B) to affect the procedures and standards applicable to the Administrator in issuing permits under section 1342(a)(1)(B) of this title, and (C) to affect the authority of any State to deny or condition certification under section 1343 of this title with respect to the issuance of permits under section
1324(a)(1)(B) of this title, see section 306(c) of Pub. L. 100–4, set out as a note under section 1342 of this title.

**Discharges from Point Sources in United States**

**Virgin Islands Attributable to Manufacture of Rum; Exemption from Federal Water Pollution Control Requirements; Conditions**


**Certain Municipal Compliance Deadlines**

**Unaffected; Exception**

Pub. L. 97–117, §21(a), Dec. 29, 1981, 95 Stat. 1631, provided in part that: “The amendment made by this subsection [amending this section] shall not be interpreted or applied to extend the date for compliance with section 301(b)(1)(B) or (C) of the Federal Water Pollution Control Act [33 U.S.C. 1311(b)(1)(B), (C)] beyond schedules for compliance in effect as of the date of enactment of this Act [Dec. 29, 1981], except in cases where reductions in the amount of financial assistance under this Act [Pub. L. 97–117, see Short Title of 1981 Amendment note set out under section 1251 of this title] or changed conditions affecting the rate of construction beyond the control of the owner or operator will make it impossible to complete construction by July 1, 1983.”

**Territorial Sea and Contiguous Zone of United States**

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

§ 1312. Water quality related effluent limitations

(a) Establishment

Whenever, in the judgment of the Administrator or as identified under section 1314(c) of this title, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 1311(b)(2) of this title, would interfere with the attainment or maintenance of that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

(b) Modifications of effluent limitations

(1) Notice and hearing

Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within 90 days of such publication hold a public hearing.

(2) Permits

(A) No reasonable relationship

The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this chapter) from achieving such limitation.

(B) Reasonable progress

The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed 5 years if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (i) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (ii) will result in reasonable further progress beyond the requirements of section 1311(b)(2) of this title toward the requirements of subsection (a) of this section.

(c) Delay in application of other limitations

The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 1311 of this title.


Amendments

1987—Subsec. (a). Pub. L. 100–4, §308(e)(2), inserted “or as identified under section 1314(c) of this title” after “Administrator” and “public health,” after “protection of”.

Subsec. (b). Pub. L. 100–4, §308(e)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic and social costs of achieving any such limitation...