

108TH CONGRESS
1ST SESSION

H. R. 1624

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2003

Mr. PALLONE introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clean Water Enforce-
5 ment and Compliance Improvement Act of 2003”.

6 **SEC. 2. FINDINGS.**

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

8 (1) a significant number of persons who have
9 been issued permits under section 402 of the Fed-

1 eral Water Pollution Control Act are in violation of
2 such permits;

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

7 (3) full, accurate and prompt reporting of pos-
8 sible violations of the Federal Water Pollution Con-
9 trol Act is necessary for implementation and well
10 served by assuring that good faith reporters of pos-
11 sible violations are protected against adverse per-
12 sonnel actions;

13 (4) often violations of such permits continue for
14 a considerable period of time, yielding significant
15 economic benefits for the violator and thus penal-
16 izing similar facilities which act lawfully;

17 (5) penalties assessed and collected by the Ad-
18 ministrators from violators of such permits are often
19 less than the economic benefit gained by the violator;

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

24 (7) actions of private citizens have been effec-
25 tive in enforcing such permits and directing funds to

1 environmental mitigation projects with over \$12.8
2 million in penalties and interest having been recovered and deposited with the Treasury of the United
3 States over the fiscal years 1990 through 1999.

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

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

21 “(i) FINDING WITH RESPECT TO CITIZEN SUITS.—
22 Congress finds that citizen suits are a valuable means of
23 enforcement of this Act and urges the Administrator to
24 take actions to encourage such suits, including providing
25 information concerning violators to citizen groups to assist

1 them in bringing suits, providing expert witnesses and
 2 other evidence with respect to such suits, and filing amicus
 3 curiae briefs on important issues related to such suits.”.

4 **SEC. 3. VIOLATIONS OF REQUIREMENTS OF LOCAL CON-**
 5 **TROL AUTHORITIES.**

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

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

16 **SEC. 4. INSPECTIONS, MONITORING, AND PROVIDING IN-**
 17 **FORMATION.**

18 (a) APPLICABILITY OF REQUIREMENTS.—Section
 19 308(a)(4)(A) of the Federal Water Pollution Control Act
 20 (33 U.S.C. 1318(a)(4)(A)) is amended by striking “the
 21 owner or operator of any point source” and inserting “a
 22 person subject to any requirement of this Act”.

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

1 (1) by inserting “(including information con-
2 tained in the permit compliance system of the Envi-
3 ronmental Protection Agency)” after “obtained
4 under this section”;

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

6 (3) by inserting “by computer telecommuni-
7 cation and other means for a period of at least 10
8 years” after “public” the first place it appears.

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

11 “(e) PUBLIC INFORMATION.—

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

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

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

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

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

24 “(A) Every permittee shall conspicuously
25 maintain at all public entrances to the facility

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

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

1 “(3) REGULATIONS.—

2 “(A) ISSUANCE.—The Administrator—

3 “(i) not later than 6 months after the
4 date of enactment of this subsection, shall
5 propose regulations to carry out this sub-
6 section; and

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

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

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

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

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

21 “(iv) uniform requirements for deter-
22 mining the nature and extent of fish and
23 shellfish bans, advisories, and consumption
24 restrictions which—

1 “(I) address cancer and non-
2 cancer human health risks;

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

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

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

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

23 “(VI) evaluate assessments of
24 health risks of contaminated fish and
25 shellfish that are used in pollution

1 control programs developed by the Ad-
2 ministrator under this Act.”.

3 (d) COMMUNITY FAIRNESS REQUIREMENTS.—Sec-
4 tion 308 of such Act is further amended by adding at the
5 end the following:

6 “(f) CLEAN WATER COMMUNITY FAIRNESS.—

7 “(1) PURPOSE.—The purpose of this subsection
8 is to ensure that violations of this title and title IV
9 in predominately minority or economically distressed
10 communities are identified and enforcement actions
11 brought as quickly and effectively as violations in
12 other communities.

13 “(2) DESIGNATION OF SPECIAL PRIORITY
14 AREAS.—

15 “(A) IN GENERAL.—Not later than 6
16 months after the date of enactment of this sub-
17 section, the President, acting through the Sec-
18 retary of Commerce, shall publish a list of ‘spe-
19 cial priority areas’, which shall be geographic
20 areas in which residents face a high degree of
21 economic distress or social disenfranchisement.

22 “(B) UPDATES.—The President shall up-
23 date the list not later than 2 years after each
24 official census count on social and economic

1 characteristics performed by the Bureau of the
2 Census under title 13, United States Code.

3 “(C) REASONS FOR INCLUSION.—The
4 President shall state the reason for including
5 each area on the list.

6 “(D) AREAS INCLUDED.—The list shall in-
7 clude—

8 “(i) all census tracts (or where not
9 tracted, all equivalent county divisions as
10 defined by the Bureau of the Census for
11 the purpose of defining poverty areas) in
12 which the poverty rate was more than 20
13 percent, as determined by the most recent
14 census data available;

15 “(ii) areas that consist of parts of one
16 or more census tracts or block numbering
17 areas, and which the President believes ex-
18 perience a high degree of pervasive pov-
19 erty, unemployment, and general distress;

20 “(iii) all census tracts or block num-
21 bering areas in which more than 50 per-
22 cent of residents identify themselves as one
23 or more of Black, Asian, American Indian,
24 Pacific Islander, Eskimo, or Aleut, or of
25 any other non-White origin or of Hispanic

1 origin, as determined by the Bureau of the
2 Census using the most recent census data
3 available; and

4 “(iv) areas in which the President be-
5 lieves residents may be subject to higher
6 than average exposure to hazardous sub-
7 stances, as determined by the President
8 using data gathered from Federal, State,
9 and local government agencies and other
10 sources of information.

11 “(3) FREQUENCY, TIMELINESS, AND EFFEC-
12 TIVENESS OF ENFORCEMENT ACTIONS IN SPECIAL
13 PRIORITY AREAS.—The President shall ensure that
14 inspection activities undertaken and enforcement ac-
15 tions brought by Federal agencies against persons in
16 violation of this title and title IV in special priority
17 areas shall be, at a minimum, at least as frequent,
18 swift, and effective as inspection activities and en-
19 forcement actions brought against violators in other
20 communities.

21 “(4) REPORTING ON INSPECTIONS AND EN-
22 FORCEMENT ACTIONS IN SPECIAL PRIORITY
23 AREAS.—Not later than 2 years after the date of en-
24 actment of this subsection, and every 2 years there-
25 after, the President shall transmit to Congress a re-

1 port comparing inspection rates and enforcement ac-
2 tions taken against facilities in special priority areas
3 with actions taken on a national basis. The report
4 shall contain a comparison of the following:

5 “(A) The rate of enforcement actions in
6 special priority areas with the aggregate na-
7 tional rate of enforcement actions for violations
8 of this title and title IV.

9 “(B) The average time for enforcement ac-
10 tions to be completed against persons subject to
11 provisions of this title and title IV in special
12 priority areas with the average enforcement
13 time on a national basis.

14 “(C) The type and average amount of pen-
15 alties assessed against violators of this title and
16 title IV in special priority areas with the type
17 and average amount assessed against violators
18 of this title and title IV on a national basis.

19 “(D) The percentage of noncompliance and
20 the severity of noncompliance of persons subject
21 to provisions of this title and title IV in special
22 priority areas with the average percentage of
23 noncompliance and the severity of noncompli-
24 ance on a national basis.

1 “(E) The frequency rate of inspection ac-
2 tivities at facilities subject to this title and title
3 IV in special priority areas with the inspection
4 rate at a national level.”.

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

7 (1) in paragraph (1)—

8 (A) by striking “and” at the end of sub-
9 paragraph (D);

10 (B) by striking the period at the end of
11 subparagraph (E) and inserting a semicolon;
12 and

13 (C) by adding at the end the following:

14 “(F) a list identifying bodies of water for
15 which signs were posted under section
16 308(e)(1) in the preceding year and the reason
17 or reasons for such posting; and

18 “(G) an analysis of the enforcement ac-
19 tions taken by such State during the preceding
20 year, including (i) the number of enforcement
21 actions, (ii) the type of enforcement action, (iii)
22 the average penalty assessed and collected for
23 each action, (iv) the number of facilities in non-
24 compliance and the reason for such noncompli-
25 ance, (v) the number of facilities in noncompli-

1 ance and the reason for such noncompliance,
 2 (vi) the number and percentage of facilities with
 3 expired permits, (vii) the number and percent
 4 of waters that are impaired, and (viii) the acres
 5 of wetlands authorized to be filled, restored, or
 6 created.”; and

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

8 “(3) CONTINUATION OF REPORTING.—Section
 9 3003 of the Federal Reports Elimination and Sunset
 10 Act of 1995 (31 U.S.C. 1113 note; 109 Stat 734–
 11 736) shall not apply to reporting under this sub-
 12 section.”.

13 **SEC. 5. CIVIL PENALTIES.**

14 (a) ENFORCEMENT OF LOCAL PRETREATMENT RE-
 15 QUIREMENTS.—

16 (1) COMPLIANCE ORDERS.—

17 (A) INITIAL ACTION.—Section 309(a)(1) of
 18 the Federal Water Pollution Control Act (33
 19 U.S.C. 1319(a)(1)) is amended by inserting
 20 after “404 of this Act,” the following: “or is
 21 in violation of any requirement imposed in a
 22 pretreatment program approved under section
 23 402(a)(3) or 402(b)(8) of this Act,”.

24 (B) ISSUANCE OF ORDERS.—Section
 25 309(a)(3) of such Act is amended by inserting

1 after “404 of this Act by a State,” the fol-
 2 lowing: “or is in violation of any requirement
 3 imposed in a pretreatment program approved
 4 under section 402(a)(3) or 402(b)(8) of this
 5 Act,”.

6 (2) CRIMINAL PENALTIES.—Section
 7 309(c)(3)(A) of such Act is amended by inserting
 8 after “Army or by a State,” the following: “or know-
 9 ingly violates any requirement imposed in a
 10 pretreatment program approved under section
 11 402(a)(3) or 402(b)(8) of this Act,”.

12 (3) ADMINISTRATIVE PENALTIES.—Section
 13 309(g)(1)(A) of such Act is amended by inserting
 14 after “404 by a State,” the following: “or has vio-
 15 lated any requirement imposed in a pretreatment
 16 program approved under section 402(a)(3) or
 17 402(b)(8) of this Act or an order issued by the Ad-
 18 ministrator under subsection (a) of this section,”.

19 (b) TREATMENT OF SINGLE OPERATIONAL UP-
 20 SETS.—

21 (1) CRIMINAL PENALTIES.—Section 309(c) of
 22 such Act is amended by striking paragraph (5) and
 23 redesignating paragraphs (6) and (7) as paragraphs
 24 (5) and (6), respectively.

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

3 (3) ADMINISTRATIVE PENALTIES.—Section
4 309(g)(3) of such Act is amended by striking the
5 last sentence.

6 (c) USE OF CIVIL PENALTIES FOR MITIGATION
7 PROJECTS.—

8 (1) IN GENERAL.—Section 309(d) of such Act
9 is amended by inserting after the second sentence
10 the following: “The court, in its discretion, may
11 order that all or a portion of a civil penalty be used
12 for carrying out beneficial projects to enhance public
13 health or the environment by restoring or otherwise
14 improving, in a manner consistent with this Act, the
15 water quality, wildlife, or habitat of specific waters
16 or watershed of the State in which the violation oc-
17 curred.”.

18 (2) CONFORMING AMENDMENT.—Section
19 505(a) of such Act (33 U.S.C. 1365(a)) is amended
20 by inserting before the period at the end of the last
21 sentence the following: “, including ordering, in ac-
22 cordance with section 309(d), the use of all or a por-
23 tion of a civil penalty for carrying out beneficial
24 projects to enhance public health or the environment
25 by restoring or otherwise improving, in a manner

1 consistent with this Act, the water quality, wildlife,
2 or habitat of specific waters or watershed of the
3 State in which the violation occurred”.

4 (d) DETERMINATION OF AMOUNT OF PENALTIES.—

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

12 (2) ADMINISTRATIVE PENALTIES.—Section
13 309(g)(3) of such Act is amended—

14 (A) by striking “or savings”; or

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

20 (e) LIMITATION ON DEFENSES.—Section 309(g)(1)

21 of such Act is amended by adding at the end the following:

22 “In a proceeding to assess or review a penalty under this
23 subsection, the adequacy of consultation between the Ad-
24 ministrator or the Secretary, as the case may be, and the

1 State shall not be a defense to assessment or enforcement
2 of such penalty.”.

3 (f) AMOUNTS OF ADMINISTRATIVE CIVIL PEN-
4 ALTIES.—

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

7 “(2) AMOUNT OF PENALTIES; NOTICE; HEAR-
8 ING.—

9 “(A) MAXIMUM AMOUNT OF PENALTIES.—

10 The amount of a civil penalty under paragraph
11 (1) may not exceed \$27,500 per violation per
12 day for each day during which the violation
13 continues.

14 “(B) WRITTEN NOTICE.—Before issuing
15 an order assessing a civil penalty under this
16 subsection, the Administrator or the Secretary,
17 as the case may be, shall give to the person to
18 be assessed the penalty written notice of the
19 Administrator’s or Secretary’s proposal to issue
20 the order and the opportunity to request, within
21 30 days of the date the notice is received by
22 such person, a hearing on the proposed order.

23 “(C) HEARINGS NOT ON THE RECORD.—If
24 the proposed penalty does not exceed \$27,500,
25 the hearing shall not be subject to section 554

1 or 556 of title 5, United States Code, but shall
2 provide a reasonable opportunity to be heard
3 and to present evidence.

4 “(D) HEARINGS ON THE RECORD.—If the
5 proposed penalty exceeds \$27,500, the hearing
6 shall be on the record in accordance with sec-
7 tion 554 of title 5, United States Code. The
8 Administrator and the Secretary may issue
9 rules for discovery procedures for hearings
10 under this subparagraph.”.

11 (2) CONFORMING AMENDMENTS.—Section
12 309(g) of such Act is amended—

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

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

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

1 (g) STATE ENFORCEMENT ACTIONS AS BAR TO FED-
2 ERAL ENFORCEMENT ACTIONS.—Section 309(g)(6)(A) of
3 such Act is amended—

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

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

7 (3) by redesignating clause (iii) as clause (ii)
8 and in such clause—

9 (A) by striking “, the Secretary, or the
10 State” and inserting “or the Secretary”; and

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

13 (h) RECOVERY OF ECONOMIC BENEFIT.—Section
14 309 of such Act is amended by adding at the end the fol-
15 lowing:

16 “(h) RECOVERY OF ECONOMIC BENEFIT.—

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

23 “(2) REGULATIONS.—Not later than 18 months
24 after the date of enactment of this subsection, the
25 Administrator shall issue regulations establishing a

1 methodology for calculating the economic benefits or
 2 savings resulting from violations of this Act. Pend-
 3 ing issuance of such regulations, this subsection
 4 shall be in effect and economic benefits shall be cal-
 5 culated for purposes of paragraph (1) on a case-by-
 6 case basis.”.

7 (i) LIMITATION ON COMPROMISES.—Section 309 of
 8 such Act is further amended by adding at the end the fol-
 9 lowing:

10 “(i) LIMITATION ON COMPROMISES OF CIVIL PEN-
 11 ALTIES.—Notwithstanding any other provision of this sec-
 12 tion, the amount of a civil penalty assessed under this sec-
 13 tion may not be compromised below the amount deter-
 14 mined by adding—

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

17 “(2) 50 percent of the difference between the
 18 amount of the civil penalty assessed and such min-
 19 imum amount.”.

20 (j) MINIMUM AMOUNT FOR SERIOUS VIOLATIONS.—
 21 Section 309 of such Act is further amended by adding at
 22 the end the following:

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

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

6 “(A) for a discharge from a point source of
7 a hazardous pollutant which exceeds or other-
8 wise violates any applicable effluent limitation
9 established by or under this Act by 20 percent
10 or more, or

11 “(B) for a discharge from a point source
12 of a pollutant (other than a hazardous pollut-
13 ant) which exceeds or otherwise violates any ap-
14 plicable effluent limitation established by or
15 under this Act by 40 percent or more,
16 shall be \$1,000 for the first such violation in a 180-
17 day period.

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

22 “(A) for the second or more discharge in
23 a 180-day period from a point source of a haz-
24 ardous pollutant which exceeds or otherwise vio-
25 lates any applicable effluent limitation estab-

1 lished by or under this Act by 20 percent or
2 more,

3 “(B) for the second or more discharge in
4 a 180-day period from a point source of a pol-
5 lutant (other than a hazardous pollutant) which
6 exceeds or otherwise violates any applicable ef-
7 fluent limitation established by or under this
8 Act by 40 percent or more,

9 “(C) for the fourth or more discharge in a
10 180-day period from a point source of any pol-
11 lutant which exceeds or otherwise violates the
12 same effluent limitation, or

13 “(D) for not filing in a 180-day period 2
14 or more reports in accordance with section
15 402(s)(1),

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

17 “(3) MANDATORY INSPECTIONS FOR SIGNIFI-
18 CANT NONCOMPLIERS.—The Administrator shall
19 identify any person described in paragraph (2) as a
20 significant noncomplier and shall conduct an inspec-
21 tion described in section 402(r) of this Act of the fa-
22 cility at which the violations were committed. Such
23 inspections shall be conducted at least once in the
24 180-day period following the date of the most recent

1 violation which resulted in such person being identi-
2 fied as a significant noncomplier.

3 “(4) ANNUAL REPORTING.—The Administrator
4 shall transmit to Congress and to the Governors of
5 the States and shall publish in the Federal Register,
6 on an annual basis, a list of all persons identified as
7 significant noncompliers under paragraph (3) in the
8 preceding calendar year and the violations which re-
9 sulted in such classifications. The Administrator
10 shall make the list available to the public upon re-
11 quest.

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

16 (k) STATE PROGRAM.—Section 402(b)(7) of such Act
17 (33 U.S.C. 1342(b)(7)) is amended to read as follows:

18 “(7) To abate violations of the permit or the
19 permit program which shall include, beginning on
20 the last day of the 2-year period beginning on the
21 date of the enactment of the Clean Water Compli-
22 ance and Enforcement Improvement Act of 2003, a
23 penalty program comparable to the Federal penalty
24 program under section 309 of this Act and which
25 shall include at a minimum criminal, civil, and civil

1 administrative penalties, and may include other ways
 2 and means of enforcement, which the State dem-
 3 onstrates to the satisfaction of the Administrator are
 4 equally effective as the Federal penalty program;”.

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

9 **SEC. 6. NATIONAL POLLUTANT DISCHARGE ELIMINATION**
 10 **PERMITS.**

11 (a) WITHDRAWAL OF STATE PROGRAM APPROVAL.—
 12 Section 402(b) of the Federal Water Pollution Control Act
 13 (33 U.S.C. 1342(b)) is amended by striking “unless he
 14 determines that adequate authority does not exist:” and
 15 inserting the following: “only when he determines that
 16 adequate authority exists and shall withdraw program ap-
 17 proval whenever he determines that adequate authority no
 18 longer exists:”.

19 (b) JUDICIAL REVIEW OF RULINGS ON APPLICA-
 20 TIONS FOR STATE PERMITS.—Section 402(b)(3) of such
 21 Act is amended by inserting “and to ensure that any inter-
 22 ested person who participated in the public comment proc-
 23 ess and any other person who could obtain judicial review
 24 of that action under any other applicable law has the right

1 to judicial review of such ruling” before the semicolon at
2 the end.

3 (c) INSPECTIONS FOR MAJOR INDUSTRIAL AND MU-
4 NICIPAL DISCHARGERS.—Section 402(b) of such Act is
5 amended—

6 (1) by striking “and” at the end of paragraph
7 (8);

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

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

11 “(10) To ensure that any permit for a dis-
12 charge from a major industrial or municipal facility,
13 as defined by the Administrator by regulation, in-
14 cludes conditions under which such facility will be
15 subject to at least annual inspections by the State
16 in accordance with subsection (r) of this section;”.

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

20 “(11) To ensure that any permit for a dis-
21 charge from a publicly owned treatment works in the
22 State includes conditions under which the treatment
23 works will require any significant industrial user of
24 the treatment works, as defined by the Adminis-
25 trator by regulation, to prepare and submit to the

1 Administrator, the State, and the treatment works
2 a monthly discharge monitoring report as a condi-
3 tion to using the treatment works;”.

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

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

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

18 “(13) To ensure that the State will grant to
19 publicly owned treatment works in the State, not
20 later than 3 years after the date of the enactment
21 of this paragraph, authority, power, and responsi-
22 bility to conduct inspections under subsection (r) of
23 this section and to assess and collect civil penalties
24 and civil administrative penalties under paragraph
25 (7) of this subsection.”.

1 (g) DENIAL OF PERMITS TO BAD ACTORS.—Section
2 402(b) of such Act is further amended by adding at the
3 end the following:

4 “(14) To deny permit issuance or renewal to
5 applicants whose compliance history in the State
6 shows a demonstrated disregard for environmental
7 laws and regulations or a pattern of noncompliance
8 with such laws and regulations.”.

9 (h) CITIZEN PETITIONS.—Section 402(d) of such Act
10 is amended—

11 (1) by redesignating paragraphs (3) and (4) as
12 paragraphs (4) and (5), respectively; and

13 (2) by inserting after paragraph (2) the fol-
14 lowing:

15 “(3) PETITIONING ADMINISTRATOR TO ISSUE
16 PERMIT.—

17 “(A) IN GENERAL.—If the Administrator
18 does not object, in writing, to the issuance of a
19 proposed permit pursuant to paragraph (2), any
20 person may petition the Administrator within
21 60 days after the expiration of the 90-day re-
22 view period specified in paragraph (2) to take
23 such action.

1 “(B) COPIES.—A copy of such petition
2 shall be provided to the State and the applicant
3 by the petitioner.

4 “(C) BASIS.—The petition shall be based
5 only on objections to the permit that were
6 raised with reasonable specificity during the
7 public comment period provided by the State
8 (unless the petitioner demonstrates in the peti-
9 tion to the Administrator that it was impracti-
10 cable to raise such objections within such period
11 or unless the grounds for such objection arose
12 after such period). The petition shall identify all
13 such objections.

14 “(D) EFFECT ON STATE-ISSUED PER-
15 MIT.—If the permit has been issued by the
16 State, the petition shall not postpone the effec-
17 tiveness of the permit.

18 “(E) DEADLINES.—The Administrator
19 shall grant or deny the petition within 60 days
20 after the petition is filed. The Administrator
21 shall issue an objection within such period if
22 the petitioner demonstrates to the Adminis-
23 trator that the permit is not in compliance with
24 the requirements of this Act, including applica-

1 ble Federal and State regulations in effect
2 under this Act.

3 “(F) JUDICIAL REVIEW.—A denial of the
4 petition shall be subject to judicial review under
5 section 509.

6 “(G) REGULATIONS.—The Administrator
7 shall issue regulations to implement this para-
8 graph.

9 “(H) NONDELEGATION.—The Adminis-
10 trator may not delegate the requirements of
11 this paragraph.”;

12 (3) in paragraph (4) (as redesignated by para-
13 graph (1) of this subsection), by inserting “WAIV-
14 ER.—” before “The Administrator”; and

15 (4) in paragraph (5) (as redesignated by para-
16 graph (1) of this subsection)—

17 (A) by inserting “PUBLIC HEARING ON
18 OBJECTIONS.—” before “In any”;

19 (B) by inserting “or (3)” after “(2)”; and

20 (C) by inserting at the end the following:

21 “No objection shall be subject to judicial review
22 until the Administrator takes final action to
23 issue or deny a permit under this subsection.”;
24 and

1 (5) by aligning paragraphs (4) and (5) (as re-
2 designated by paragraph (2) of this subsection) with
3 paragraph (3) (as inserted by paragraph (2) of this
4 subsection).

5 (i) INSPECTION.—Section 402 of such Act is amend-
6 ed by adding at the end the following:

7 “(r) INSPECTION.—

8 “(1) GENERAL RULE.—Each permit for a dis-
9 charge into the navigable waters or introduction of
10 pollutants into a publicly owned treatment works
11 issued under this section shall include conditions
12 under which the effluent being discharged will be
13 subject to random unannounced inspections in ac-
14 cordance with this subsection by the Administrator
15 or the State, in the case of a State permit program
16 under this section.

17 “(2) MINIMUM STANDARDS.—Not later than 6
18 months after the date of enactment of this sub-
19 section, the Administrator shall establish minimum
20 standards for inspections under this subsection.
21 Such standards shall require, at a minimum, the fol-
22 lowing:

23 “(A) An annual representative sampling by
24 the Administrator or the State, in the case of
25 a State permit program under this section, of

1 the effluent being discharged; except that if the
2 discharge is not from a major industrial or mu-
3 nicipal facility such sampling shall be conducted
4 at least once every 3 years.

5 “(B) An analysis of all samples collected
6 under subparagraph (A) by a Federal or State
7 owned and operated laboratory or a State ap-
8 proved laboratory, other than one that is being
9 used by the permittee or that is directly or indi-
10 rectly owned, operated, or managed by the per-
11 mittee.

12 “(C) An evaluation of the maintenance
13 record of any treatment equipment of the per-
14 mittee.

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

17 “(E) A random check of discharge moni-
18 toring reports of the permittee for each 12-
19 month period for the purpose of determining
20 whether or not such reports are consistent with
21 the applicable analyses conducted under sub-
22 paragraph (B).

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

1 (j) REPORTING.—Section 402 of such Act is further
2 amended by adding at the end the following:

3 “(s) REPORTING.—

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

17 “(2) REPORTING OF HAZARDOUS DIS-
18 CHARGES.—

19 “(A) GENERAL RULE.—If a discharge
20 from a point source for which a permit is issued
21 under this section exceeds an effluent limitation
22 contained in such permit which is based on an
23 acute water quality standard or any other dis-
24 charge which may cause an exceedance of an
25 acute water quality standard or otherwise is

1 likely to cause injury to persons or damage to
2 the environment or to pose a threat to human
3 health and the environment, the person holding
4 such permit shall notify the Administrator and
5 the affected States and municipalities, in writ-
6 ing, of such discharge not later than 2 hours
7 after the later of the time at which such dis-
8 charge commenced or the time at which the
9 permittee knew or had reason to know of such
10 discharge.

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

1 discharge is continuing, and the measures taken
2 or being taken (i) to remediate the problem
3 caused by the discharge and any damage to the
4 environment, and (ii) to avoid a repetition of
5 the discharge.

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

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

24 “(t) SIGNIFICANT NONCOMPLIERS.—No permit may
25 be issued under this section to any person (other than a

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

16 (l) APPLICABILITY.—The amendments made by this
17 section and section 8 shall apply to permits issued before,
18 on, or after the date of enactment of this Act; except
19 that—

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

1 (2) with respect to all other permits issued be-
 2 fore such date of enactment, such amendments shall
 3 take effect on the last day of the 18-month period
 4 beginning on such date of enactment.

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

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

9 “(6) EXPIRED STATE PERMITS.—

10 “(A) AUTHORITY OF ADMINISTRATOR.—In
 11 any case in which—

12 “(i) a permit issued by a State for a
 13 discharge has expired,

14 “(ii) the permittee has submitted an
 15 application to the State for a new permit
 16 for the discharge, and

17 “(iii) the State has not acted on the
 18 application before the last day of the 12-
 19 month period beginning on the date the
 20 permit expired,

21 the Administrator may issue a permit for the
 22 discharge under subsection (a).

23 “(B) TREATMENT IF NO NEW PERMIT.—If
 24 a permit issued by a State for a discharge of
 25 one or more pollutants expires and the State or

the Administrator has not issued a new permit for the discharge by the last day of the 12-month period beginning on the date the permit expired, the permittee shall be in violation of this Act if the permittee continues to discharge such pollutants.

“(C) APPLICABILITY OF NEW REGULATIONS.—If a State or the Administrator allows a discharge to continue after the date of expiration of a permit issued by the State or Administrator and before issuance of a new permit for the discharge, regulations issued after such expiration date shall apply to the discharge under the expired permit.”.

SEC. 8. POLLUTION PREVENTION PLANS.

Section 402 of the Federal Water Pollution Control Act (42 U.S.C. 1342) is further amended by adding at the end the following:

“(u) POLLUTION PREVENTION PLANS.—

“(1) IN GENERAL.—Each applicant for a permit for a discharge of one or more pollutants shall submit to the Administrator, with the application for the permit, a pollution prevention plan that details the applicant’s plans for reducing the discharge of such pollutants at a measurable rate.

1 “(2) FORM AND CONTENT.—The plan shall be
2 in such form and contain such information as the
3 Administrator may require by regulation.

4 “(3) DEADLINE FOR ISSUANCE OF REGULA-
5 TIONS.—The Administrator shall issue regulations to
6 carry out this subsection not later than the last day
7 of the 18-month period beginning on the date of en-
8 actment of this subsection.”.

9 **SEC. 9. COMPLIANCE SCHEDULE.**

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

17 **SEC. 10. EMERGENCY POWERS.**

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

20 **“SEC. 504. COMMUNITY PROTECTION.**

21 “(a) ISSUANCE OF ORDERS; COURT ACTION.—Not-
22 withstanding any other provision of this Act, whenever the
23 Administrator finds that, because of an actual or threat-
24 ened direct or indirect discharge of a pollutant, there may
25 be an imminent and substantial endangerment to the pub-

1 lic health or welfare (including the livelihood of persons)
2 or the environment (including wildlife), the Administrator
3 may issue such orders or take such action as may be nec-
4 essary to protect public health or welfare or the environ-
5 ment and commence a suit (or cause it to be commenced)
6 in the United States district court for the district where
7 the discharge or threat occurs. Such court may grant such
8 relief to abate the threat and to protect against the
9 endangerment as the public interest and the equities re-
10 quire, enforce, and adjudge penalties for disobedience to
11 orders of the Administrator issued under this section, and
12 grant other relief according to the public interest and the
13 equities of the case.

14 “(b) ENFORCEMENT OF ORDERS.—Any person who,
15 without sufficient cause, violates or fails to comply with
16 an order of the Administrator issued under this section,
17 shall be liable for civil penalties to the United States in
18 an amount not to exceed \$27,500 per day for each day
19 on which such violation or failure occurs or continues.”.

20 **SEC. 11. CITIZEN SUITS.**

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

24 (1) in subsection (a)(1) by inserting “to have
25 violated (if there is evidence that the alleged viola-

1 tions has been repeated) or” after “who is alleged”;
2 and

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

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

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

10 (1) in paragraph (1)(B) by striking “right.”
11 and inserting “right and may obtain costs of litiga-
12 tion under subsection (d), or”; and

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

1 by the Administrator meets the requirements of sec-
2 tion 309(g)(6) of this Act.”.

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

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

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

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

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

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

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

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

10 **SEC. 12. EMPLOYEE PROTECTION.**

11 Section 507 of the Federal Water Pollution Control
 12 Act (33 U.S.C. 1367) is amended—

13 (1) in subsection (e) by inserting “CONTINUING
 14 EVALUATIONS.—” after “(e)”;

15 (2) by redesignating subsection (e) as sub-
 16 section (f); and

17 (3) by striking subsections (a), (b), (c), and (d)
 18 and inserting the following:

19 “(a) IN GENERAL.—No employer or other person
 20 may harass, prosecute, hold liable, or discriminate against
 21 any employee or other person because the person—

22 “(1) is assisting or demonstrating an intent to
 23 assist in achieving compliance with any provision of
 24 this Act (including a rule or regulation issued to
 25 carry out this Act);

1 “(2) is refusing to violate or assist in the viola-
2 tion of any provision of this Act (including a rule or
3 regulation issued to carry out this Act); or

4 “(3) has commenced, caused to be commenced,
5 or is about to commence a proceeding, has testified
6 or is about to testify at a proceeding, or has assisted
7 or participated or is about to assist or participate in
8 any manner in such a proceeding or in any other ac-
9 tion to carry out the purposes of this Act.

10 “(b) FILING COMPLAINTS AND PROCEDURES.—

11 “(1) FILING DEADLINE.—An employee alleging
12 a violation of subsection (a), or another person at
13 the employee’s request, may file a complaint with
14 the Secretary of Labor not later than 365 days after
15 the alleged violation occurred.

16 “(2) PROCEDURES.—

17 “(A) INVESTIGATION; PRELIMINARY OR-
18 DERS.—Not later than 60 days after receiving
19 a complaint, the Secretary shall conduct an in-
20 vestigation, decide whether it is reasonable to
21 believe the complaint has merit, and notify the
22 complainant and the person alleged to have
23 committed the violation of the findings. If the
24 Secretary decides it is reasonable to believe a
25 violation occurred, the Secretary shall include

1 with the decision findings and a preliminary
2 order for the relief provided under paragraph
3 (3).

4 “(B) OBJECTIONS TO PRELIMINARY
5 ORDER.—Not later than 30 days after the no-
6 tice under subparagraph (A) of this paragraph,
7 the complainant and the person alleged to have
8 committed the violation may file objections to
9 the findings or preliminary order, or both, and
10 request a hearing on the record. The filing of
11 objections does not stay a reinstatement or-
12 dered in the preliminary order. If a hearing is
13 not requested within the 30 days, the prelimi-
14 nary order is final and not subject to judicial
15 review.

16 “(C) HEARING; FINAL ORDER; SETTLE-
17 MENT AGREEMENT.—A hearing shall be con-
18 ducted expeditiously. Not later than 120 days
19 after the end of the hearing, the Secretary shall
20 issue a final order. Before the final order is
21 issued, the proceeding may be ended by a settle-
22 ment agreement made by the Secretary, the
23 complainant, and the person alleged to have
24 committed the violation.

25 “(3) ORDER.—

1 “(A) PENALTIES.—If the Secretary de-
2 cides, on the basis of a complaint, a person vio-
3 lated subsection (a), the Secretary shall order
4 the person to—

5 “(i) take affirmative action to abate
6 the violation;

7 “(ii) reinstate the complainant to the
8 former position with the same pay and
9 terms and privileges of employment; and

10 “(iii) pay compensatory damages, in-
11 cluding back pay.

12 “(B) COSTS.—If the Secretary issues an
13 order under subparagraph (A) and the com-
14 plainant requests, the Secretary may assess
15 against the person against whom the order is
16 issued the costs (including attorney’s fees) rea-
17 sonably incurred by the complainant in bringing
18 the complaint. The Secretary shall determine
19 the costs that reasonably were incurred.

20 “(4) JUDICIAL REVIEW AND VENUE.—A person
21 adversely affected by an order issued after a hearing
22 under this subsection may file a petition for review,
23 not later than 60 days after the order is issued, in
24 the court of appeals of the United States for the cir-
25 cuit in which the violation occurred or the person re-

1 sided on the date of the violation. The review shall
2 be heard and decided expeditiously. An order of the
3 Secretary subject to review under this paragraph is
4 not subject to judicial review in a criminal or other
5 civil proceeding.

6 “(5) CIVIL ACTIONS TO ENFORCE.—If a person
7 fails to comply with an order issued under this sub-
8 section, the Secretary shall bring a civil action to en-
9 force the order in the district court of the United
10 States for the judicial district in which the violation
11 occurred.

12 “(c) BURDENS OF PROOF.—The legal burdens of
13 proof with respect to a violation of subsection (a) shall
14 be governed by the applicable provisions of sections 1214
15 and 1221 of title 5, United States Code.

16 “(d) SUBPOENA AUTHORITY.—With respect to an al-
17 leged violation of subsection (a), the Secretary of Labor
18 may issue a subpoena for the attendance and testimony
19 of any person and the production of documentary or other
20 evidence from any person if the testimony or production
21 requested is not unduly burdensome and appears reason-
22 ably calculated to lead to the discovery of admissible evi-
23 dence.

1 “(e) POSTING REQUIREMENT.—The provisions of
 2 this section shall be prominently posted in any place of
 3 employment to which this section applies.”.

4 **SEC. 13. ISSUANCE OF SUBPOENAS.**

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

10 **SEC. 14. JUDICIAL REVIEW OF EPA ACTIONS.**

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

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

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

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

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

6 **SEC. 15. NATIONAL CLEAN WATER TRUST FUND.**

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

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

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

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

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

1 Act. In addition, the Administrator may make such
2 amounts of money in the Fund as the Administrator de-
3 termines appropriate available to carry out title VI of this
4 Act.”.

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

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

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

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

18 **SEC. 16. FEDERAL FACILITIES CLEAN WATER COMPLIANCE.**

19 (a) APPLICATION OF CERTAIN PROVISIONS TO FED-
20 ERAL FACILITIES.—Section 313(a) of the Federal Water
21 Pollution Control Act (33 U.S.C. 1323(a)) is amended to
22 read as follows:

23 “(a) COMPLIANCE.—

1 “(1) DEFINITION OF REASONABLE SERVICE
2 CHARGE.—In this subsection, the term ‘reasonable
3 service charge’ includes—

4 “(A) a fee or charge assessed in connection
5 with the processing, issuance, renewal, or
6 amendment of a permit, review of a plan, study,
7 or other document, or inspection or monitoring
8 of a facility; and

9 “(B) any other nondiscriminatory charge
10 that is assessed in connection with a Federal,
11 State, interstate, or local water pollution regu-
12 latory program.

13 “(2) REQUIREMENT.—Each department, agen-
14 cy, and instrumentality of the executive, legislative,
15 or judicial branch of the Federal Government that
16 has jurisdiction over any property or facility, or is
17 engaged in any activity that results, or that may re-
18 sult, in the discharge or runoff of a pollutant shall
19 be subject to, and shall comply with, all Federal,
20 State, interstate, and local substantive and proce-
21 dural requirements (including any requirement for a
22 permit or reporting, any provision for injunctive re-
23 lief and such sanctions as are imposed by a Federal
24 or State court to enforce the relief, and any require-
25 ment for the payment of a reasonable service

1 charge) concerning the control and abatement of
2 water pollution in the same manner, and to the same
3 extent, as any other person is subject to the require-
4 ments.

5 “(3) WAIVER OF SOVEREIGN IMMUNITY.—The
6 United States expressly waives any immunity other-
7 wise applicable to the United States with respect to
8 any substantive or procedural requirement, adminis-
9 trative authority, and process and sanction described
10 in paragraph (2), including immunity from process
11 in an administrative or court action seeking—

12 “(A) injunctive relief;

13 “(B) imposition of a sanction referred to
14 in this subsection;

15 “(C) enforcement of an administrative
16 order;

17 “(D) imposition of an administrative or
18 civil penalty or fine; or

19 “(E) payment of a reasonable service
20 charge.

21 “(4) ADMINISTRATIVE ORDERS AND PEN-
22 ALTIES.—The substantive and procedural require-
23 ments described in paragraph (2) include all admin-
24 istrative orders and all civil and administrative pen-
25 alties or fines, regardless of whether the penalties or

1 fines are punitive or coercive in nature or are im-
2 posed for isolated, intermittent, or continuing viola-
3 tions.

4 “(5) INJUNCTIVE RELIEF.—The United States
5 (including any agent, employee, or officer of the
6 United States) shall not be immune or exempt from
7 any process or sanction of any State or Federal
8 court with respect to the enforcement of any injunc-
9 tive relief referred to in paragraphs (2) and (3).

10 “(6) CIVIL PENALTIES.—No agent, employee,
11 or officer of the United States shall be personally
12 liable for any civil penalty under any Federal, State,
13 interstate, or local water pollution regulatory pro-
14 gram with respect to any act or omission within the
15 scope of the official duties of the agent, employee, or
16 officer.

17 “(7) CRIMINAL PENALTIES.—

18 “(A) AGENTS, EMPLOYEES, AND OFFI-
19 CERS.—An agent, employee, or officer of the
20 United States shall be subject to any criminal
21 sanction (including a fine or imprisonment)
22 under any Federal, State, interstate, or local
23 water pollution regulatory program.

24 “(B) DEPARTMENTS, AGENCIES, AND IN-
25 STRUMENTALITIES.—No department, agency,

1 or instrumentality of the executive, legislative,
2 or judicial branch of the Federal Government
3 shall be subject to a sanction referred to in sub-
4 paragraph (A).”.

5 (b) FEDERAL FACILITY ENFORCEMENT.—Section
6 309 of such Act (33 U.S.C. 1319) is further amended by
7 adding at the end the following:

8 “(k) FEDERAL FACILITY ENFORCEMENT.—

9 “(1) COMPLIANCE ORDERS.—

10 “(A) IN GENERAL.—Whenever on the basis
11 of any information available to him or her—

12 “(i) the Administrator determines
13 that any department, agency, or instru-
14 mentality of the United States has violated
15 or is in violation of section 301, 302, 306,
16 307, 308, 311, 318, or 405 of this Act, or
17 has violated or is in violation of any permit
18 condition or limitation implementing any
19 such section in a permit issued under sec-
20 tion 402 of this Act by the Administrator
21 or by a State, or in a permit issued under
22 section 404 of this Act by a State, or any
23 requirement imposed in a pretreatment
24 program approved under section 402(a)(3)
25 or 402(b)(8) of this Act, or any require-

1 ment imposed under section 402(b)(9) of
2 this Act;

3 “(ii) the Secretary of the Army deter-
4 mines that any department, agency, or in-
5 strumentality of the United States has vio-
6 lated or is in violation of section 301 with
7 regard to discharges of dredged or fill ma-
8 terial or any condition or limitation in a
9 permit issued under section 404 of this
10 Act; and

11 “(iii) the Secretary of the department
12 in which the Coast Guard is operating de-
13 termines that any department, agency, or
14 instrumentality of the United States has
15 violated any provision of section 311 of
16 this Act or any of its implementing regula-
17 tions;

18 the Administrator or Secretary, as applicable,
19 may issue an order to assess an administrative
20 penalty for any past or current violation or re-
21 quire compliance or correction of any past or
22 current violation immediately or within a speci-
23 fied time period, or both.

24 “(B) REQUIRED TERMS.—Any order
25 issued under this subsection—

1 “(i) by the Administrator may include
2 a suspension or revocation of any permit
3 issued by the Administrator or a State
4 under sections 402 and 404 of this Act;
5 and

6 “(ii) by the Secretary of the Army
7 may include a suspension or revocation of
8 any permit issued by the Secretary of the
9 Army under section 404 of this Act; and
10 shall state with reasonable specificity the nature of
11 the violation. Any penalty assessed in the order shall
12 not exceed \$27,500 per day for each violation.

13 “(2) VIOLATION OF COMPLIANCE ORDERS.—If
14 a violator fails to take corrective action within the
15 time specified in an order issued under paragraph
16 (1)—

17 “(A) the Administrator or Secretary, as
18 applicable, may assess a civil penalty of not
19 more than \$27,500 for each day of continued
20 noncompliance with the order; and

21 “(B)(i) the Administrator may suspend or
22 revoke any permit issued pursuant to section
23 402 or 404 of this Act which is the subject of
24 the order, whether issued by the Administrator
25 or the State; and

1 “(ii) the Secretary of the Army may sus-
2 pend or revoke any permit issued pursuant to
3 section 404 of this Act.

4 “(3) EMERGENCY ORDERS AT FEDERAL FACILI-
5 TIES.—The Administrator may issue an emergency
6 administrative order to, and assess an administrative
7 penalty for violations of the order against, a Federal
8 agency under the same circumstances as an emer-
9 gency order may be issued to, and such penalty for
10 violation of such order may be assessed, against any
11 other person under this title.

12 “(4) PUBLIC HEARING.—

13 “(A) IN GENERAL.—Any order issued
14 under this subsection shall become final unless,
15 not later than 30 days after the order is served,
16 a department, agency, or instrumentality of the
17 United States named therein requests a public
18 hearing.

19 “(B) CONDUCT.—Upon a request under
20 this paragraph, the Administrator or Secretary,
21 as applicable, shall promptly conduct a public
22 hearing. Such public hearing shall be conducted
23 in accordance with section 554 of title 5,
24 United States Code.

1 “(C) SUBPOENAS.—In connection with any
2 proceeding under this subsection, the Adminis-
3 trator or Secretary may issue subpoenas for the
4 attendance and testimony of witnesses and the
5 production of relevant papers, books, and docu-
6 ments and may promulgate rules for discovery
7 procedures.

8 “(5) CONSULTATION WITH THE ADMINIS-
9 TRATOR.—No administrative order, including any
10 emergency order or field citation, issued to a Federal
11 department, agency or instrumentality under this
12 subsection shall become final until such department,
13 agency, or instrumentality has had the opportunity
14 to confer with the Administrator.

15 “(6) EXISTING COMPLIANCE ORDERS.—Nothing
16 in this subsection shall be construed to alter, modify,
17 or change in any manner any Federal facility com-
18 pliance agreement, permit, administrative order or
19 judicial order that is in effect on the effective date
20 of this subsection.

21 “(7) ACTIONS AND RIGHTS OF INTERESTED
22 PERSONS.—No administrative action which has been
23 commenced by the Administrator or the Secretary
24 under this subsection with respect to a violation
25 shall preclude a civil enforcement action under sec-

1 tion 505 of this Act for the same violation or viola-
2 tions.

3 “(8) SPECIAL RULES.—

4 “(A) PUBLIC NOTICE.—Before issuing an
5 order under this subsection, the Administrator
6 or Secretary, as the case may be, shall provide
7 public notice of and reasonable opportunity to
8 comment on the proposed issuance of such
9 order.

10 “(B) PRESENTATION OF EVIDENCE.—Any
11 person who comments on a proposed order
12 under this subsection shall be given notice of
13 any hearing held with respect to the proposed
14 order and the order. In any hearing held under
15 this subsection, such person shall have a rea-
16 sonable opportunity to be heard and to present
17 evidence.

18 “(9) CITIZEN’S CIVIL ACTION.—Any person
19 may commence a civil action on his or her own be-
20 half against—

21 “(A) any Federal agency that is alleged to
22 have violated or to be in violation of any order
23 issued by the Administrator or the Secretary
24 under this title; or

1 “(B) any Federal agency that fails, within
 2 1 year of the effective date of a final order, to
 3 pay a penalty assessed by the Administrator or
 4 the Secretary under this subsection.”.

5 (c) DEFINITION OF PERSON.—

6 (1) GENERAL DEFINITIONS.—Section 502(5) of
 7 such Act (33 U.S.C. 1362(5)) is further amended by
 8 inserting before the period at the end the following:
 9 “and includes any department, agency, or instru-
 10 mentality of the United States”.

11 (2) OIL AND HAZARDOUS SUBSTANCE LIABILITY
 12 PROGRAM.—Section 311(a)(7) of such Act (33
 13 U.S.C. 1321(a)(7)) is amended by inserting before
 14 the semicolon at the end the following: “and any de-
 15 partment, agency, or instrumentality of the United
 16 States”.

17 **SEC. 17. APPLICABILITY.**

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

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