SELECTED SECTIONS OF THE CLEAN WATER ACT

33 U.S.C. § 1251. et seq.

SUBCHAPTER I: RESEARCH AND RELATED PROGRAMS

33 U.S.C. § 1251. Congressional declaration of goals and policy [CWA § 101]

(a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective

The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter--

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State;

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and

(7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution.

(b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority
under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

(c) Congressional policy toward Presidential activities with foreign countries

It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Administrator of Environmental Protection Agency to administer chapter

Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called “Administrator”) shall administer this chapter.

(e) Public participation in development, revision, and enforcement of any regulation, etc.

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) Procedures utilized for implementing chapter

It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

(g) Authority of States over water

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any
State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

**SUBCHAPTER II: GRANTS FOR CONSTRUCTION OF TREATMENT WORKS**

§ 1288. Areawide waste treatment management [CWA § 208]

(a) Identification and designation of areas having substantial water quality control problems

For the purpose of encouraging and facilitating the development and implementation of areawide waste treatment management plans--

(1) The Administrator, within ninety days after October 18, 1972, and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems.

(2) The Governor of each State, within sixty days after publication of the guidelines issued pursuant to paragraph (1) of this subsection, shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred and twenty days following such identification and after consultation with appropriate elected and other officials of local governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) a single representative organization, including elected officials from local governments or their designees, capable of developing effective areawide waste treatment management plans for such area. The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines areawide waste treatment management to be appropriate, designate the boundaries of such area, and designate an organization capable of developing effective areawide waste treatment management plans for such area.

(3) With respect to any area which, pursuant to the guidelines issued under paragraph (1) of this subsection, is located in two or more States, the Governors of the respective States shall consult and cooperate in carrying out the provisions of paragraph (2), with a view toward designating the boundaries of the interstate area having common water quality control problems and for which areawide waste treatment management plans would be most effective, and toward designating, within one hundred and eighty days after publication of guidelines issued pursuant to paragraph (1) of this subsection, of a single representative organization capable of developing effective areawide waste treatment management plans for such area.

(4) If a Governor does not act, either by designating or determining not to make a designation under paragraph (2) of this subsection, within the time required by such paragraph, or if, in the case of an interstate area, the Governors of the States involved do
not designate a planning organization within the time required by paragraph (3) of this subsection, the chief elected officials of local governments within an area may by agreement designate (A) the boundaries for such an area, and (B) a single representative organization including elected officials from such local governments, or their designees, capable of developing an areawide waste treatment management plan for such area.

(5) Existing regional agencies may be designated under paragraphs (2), (3), and (4) of this subsection.

(6) The State shall act as a planning agency for all portions of such State which are not designated under paragraphs (2), (3), or (4) of this subsection.

(7) Designations under this subsection shall be subject to the approval of the Administrator.

(b) Planning process

(1)(A) Not later than one year after the date of designation of any organization under subsection (a) of this section such organization shall have in operation a continuing areawide waste treatment management planning process consistent with section 1281 of this title. Plans prepared in accordance with this process shall contain alternatives for waste treatment management, and be applicable to all wastes generated within the area involved. The initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than two years after the planning process is in operation.

(B) For any agency designated after 1975 under subsection (a) of this section and for all portions of a State for which the State is required to act as the planning agency in accordance with subsection (a)(6) of this section, the initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than three years after the receipt of the initial grant award authorized under subsection (f) of this section.

(2) Any plan prepared under such process shall include, but not be limited to--

(A) the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, annually updated (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works, and an identification of open space and recreation opportunities that can be expected to result from improved water quality, including consideration of potential use of lands associated with treatment works and increased access to water-based recreation;

(B) the establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;
(C) the establishment of a regulatory program to--

(i) implement the waste treatment management requirements of section 1281(c) of this title,

(ii) regulate the location, modification, and construction of any facilities within such area which may result in any discharge in such area, and

(iii) assure that any industrial or commercial wastes discharged into any treatment works in such area meet applicable pretreatment requirements;

(D) the identification of those agencies necessary to construct, operate, and maintain all facilities required by the plan and otherwise to carry out the plan;

(E) the identification of the measures necessary to carry out the plan (including financing), the period of time necessary to carry out the plan, the costs of carrying out the plan within such time, and the economic, social, and environmental impact of carrying out the plan within such time;

(F) a process to (i) identify, if appropriate, agriculturally and silviculturally related nonpoint sources of pollution, including return flows from irrigated agriculture, and their cumulative effects, runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(G) a process to (i) identify, if appropriate, mine-related sources of pollution including new, current, and abandoned surface and underground mine runoff, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(H) a process to (i) identify construction activity related sources of pollution, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(I) a process to (i) identify, if appropriate, salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, ground water extraction, and diversion, and (ii) set forth procedures and methods to control such intrusion to the extent feasible where such procedures and methods are otherwise a part of the waste treatment management plan;

(J) a process to control the disposition of all residual waste generated in such area which could affect water quality; and

(K) a process to control the disposal of pollutants on land or in subsurface excavations within such area to protect ground and surface water quality.

(3) Areawide waste treatment management plans shall be certified annually by the Governor or his designee (or Governors or their designees, where more than one State is
involved) as being consistent with applicable basin plans and such areawide waste treatment management plans shall be submitted to the Administrator for his approval.

(4)(A) Whenever the Governor of any State determines (and notifies the Administrator) that consistency with a statewide regulatory program under section 1313 of this title so requires, the requirements of clauses (F) through (K) of paragraph (2) of this subsection shall be developed and submitted by the Governor to the Administrator for approval for application to a class or category of activity throughout such State.

(B) Any program submitted under subparagraph (A) of this paragraph which, in whole or in part, is to control the discharge or other placement of dredged or fill material into the navigable waters shall include the following:

(i) A consultation process which includes the State agency with primary jurisdiction over fish and wildlife resources.

(ii) A process to identify and manage the discharge or other placement of dredged or fill material which adversely affects navigable waters, which shall complement and be coordinated with a State program under section 1344 of this title conducted pursuant to this chapter.

(iii) A process to assure that any activity conducted pursuant to a best management practice will comply with the guidelines established under section 1344(b)(1) of this title, and sections 1317 and 1343 of this title.

(iv) A process to assure that any activity conducted pursuant to a best management practice can be terminated or modified for cause including, but not limited to, the following:

(I) violation of any condition of the best management practice;

(II) change in any activity that requires either a temporary or permanent reduction or elimination of the discharge pursuant to the best management practice.

(v) A process to assure continued coordination with Federal and Federal-State water-related planning and reviewing processes, including the National Wetlands Inventory.

(C) If the Governor of a State obtains approval from the Administrator of a statewide regulatory program which meets the requirements of subparagraph (B) of this paragraph and if such State is administering a permit program under section 1344 of this title, no person shall be required to obtain an individual permit pursuant to such section, or to comply with a general permit issued pursuant to such section, with respect to any appropriate activity within such State for which a best management practice has been approved by the Administrator under the program approved by the Administrator pursuant to this paragraph.

(D)(i) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with the requirements
of this section, the Administrator shall so notify the State, and if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(ii) In the case of a State with a program submitted and approved under this paragraph, the Administrator shall withdraw approval of such program under this subparagraph only for a substantial failure of the State to administer its program in accordance with the requirements of this paragraph.

(c) Regional operating agencies

(1) The Governor of each State, in consultation with the planning agency designated under subsection (a) of this section, at the time a plan is submitted to the Administrator, shall designate one or more waste treatment management agencies (which may be an existing or newly created local, regional, or State agency or political subdivision) for each area designated under subsection (a) of this section and submit such designations to the Administrator.

(2) The Administrator shall accept any such designation, unless, within 120 days of such designation, he finds that the designated management agency (or agencies) does not have adequate authority--

(A) to carry out appropriate portions of an areawide waste treatment management plan developed under subsection (b) of this section;

(B) to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;

(C) directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;

(D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;

(E) to raise revenues, including the assessment of waste treatment charges;

(F) to incur short- and long-term indebtedness;

(G) to assure in implementation of an areawide waste treatment management plan that each participating community pays its proportionate share of treatment costs;

(H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and
(I) to accept for treatment industrial wastes.

d) Conformity of works with area plan

After a waste treatment management agency having the authority required by subsection (c) of this section has been designated under such subsection for an area and a plan for such area has been approved under subsection (b) of this section, the Administrator shall not make any grant for construction of a publicly owned treatment works under section 1281(g)(1) of this title within such area except to such designated agency and for works in conformity with such plan.

e) Permits not to conflict with approved plans

No permit under section 1342 of this title shall be issued for any point source which is in conflict with a plan approved pursuant to subsection (b) of this section.

f) Grants

(1) The Administrator shall make grants to any agency designated under subsection (a) of this section for payment of the reasonable costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

(2) For the two-year period beginning on the date the first grant is made under paragraph (1) of this subsection to an agency, if such first grant is made before October 1, 1977, the amount of each such grant to such agency shall be 100 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section, and thereafter the amount granted to such agency shall not exceed 75 per centum of such costs in each succeeding one-year period.

In the case of any other grant made to an agency under such paragraph (1) of this subsection, the amount of such grant shall not exceed 75 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process in any year.

(3) Each applicant for a grant under this subsection shall submit to the Administrator for his approval each proposal for which a grant is applied for under this subsection. The Administrator shall act upon such proposal as soon as practicable after it has been submitted, and his approval of that proposal shall be deemed a contractual obligation of the United States for the payment of its contribution to such proposal, subject to such amounts as are provided in appropriation Acts. There is authorized to be appropriated to carry out this subsection not to exceed $50,000,000 for the fiscal year ending June 30, 1973, not to exceed $100,000,000 for the fiscal year ending June 30, 1974, not to exceed $150,000,000 per fiscal year for the fiscal years ending June 30, 1975, September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, not to exceed $100,000,000 per fiscal year for the fiscal years ending September 30, 1981, and September 30, 1982, and such sums as may be necessary for fiscal years 1983 through 1990.
(g) Technical assistance by Administrator

The Administrator is authorized, upon request of the Governor or the designated planning agency, and without reimbursement, to consult with, and provide technical assistance to, any agency designated under subsection (a) of this section in the development of areawide waste treatment management plans under subsection (b) of this section.

(h) Technical assistance by Secretary of the Army

(1) The Secretary of the Army, acting through the Chief of Engineers, in cooperation with the Administrator is authorized and directed, upon request of the Governor or the designated planning organization, to consult with, and provide technical assistance to, any agency designed under subsection (a) of this section in developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

(2) There is authorized to be appropriated to the Secretary of the Army, to carry out this subsection, not to exceed $50,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974.

(i) State best management practices program

(1) The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall, upon request of the Governor of a State, and without reimbursement, provide technical assistance to such State in developing a statewide program for submission to the Administrator under subsection (b)(4)(B) of this section and in implementing such program after its approval.

(2) There is authorized to be appropriated to the Secretary of the Interior $6,000,000 to complete the National Wetlands Inventory of the United States, by December 31, 1981, and to provide information from such Inventory to States as it becomes available to assist such States in the development and operation of programs under this chapter.

(j) Agricultural cost sharing

(1) The Secretary of Agriculture, with the concurrence of the Administrator, and acting through the Soil Conservation Service and such other agencies of the Department of Agriculture as the Secretary may designate, is authorized and directed to establish and administer a program to enter into contracts, subject to such amounts as are provided in advance by appropriation acts, of not less than five years nor more than ten years with owners and operators having control of rural land for the purpose of installing and maintaining measures incorporating best management practices to control nonpoint source pollution for improved water quality in those States or areas for which the Administrator has approved a plan under subsection (b) of this section where the practices to which the contracts apply are certified by the management agency designated
under subsection (c)(1) of this section to be consistent with such plans and will result in improved water quality. Such contracts may be entered into during the period ending not later than September 31, 1988. Under such contracts the land owner or operator shall agree--

(i) to effectuate a plan approved by a soil conservation district, where one exists, under this section for his farm, ranch, or other land substantially in accordance with the schedule outlined therein unless any requirement thereof is waived or modified by the Secretary;

(ii) to forfeit all rights to further payments or grants under the contract and refund to the United States all payments and grants received thereunder, with interest, upon his violation of the contract at any stage during the time he has control of the land if the Secretary, after considering the recommendations of the soil conservation district, where one exists, and the Administrator, determines that such violation is of such a nature as to warrant termination of the contract, or to make refunds or accept such payment adjustments as the Secretary may deem appropriate if he determines that the violation by the owner or operator does not warrant termination of the contract;

(iii) upon transfer of his right and interest in the farm, ranch, or other land during the contract period to forfeit all rights to further payments or grants under the contract and refund to the United States all payments or grants received thereunder, with interest, unless the transferee of any such land agrees with the Secretary to assume all obligations of the contract;

(iv) not to adopt any practice specified by the Secretary on the advice of the Administrator in the contract as a practice which would tend to defeat the purposes of the contract;

(v) to such additional provisions as the Secretary determines are desirable and includes in the contract to effectuate the purposes of the program or to facilitate the practical administration of the program.

(2) In return for such agreement by the landowner or operator the Secretary shall agree to provide technical assistance and share the cost of carrying out those conservation practices and measures set forth in the contract for which he determines that cost sharing is appropriate and in the public interest and which are approved for cost sharing by the agency designated to implement the plan developed under subsection (b) of this section. The portion of such cost (including labor) to be shared shall be that part which the Secretary determines is necessary and appropriate to effectuate the installation of the water quality management practices and measures under the contract, but not to exceed 50 per centum of the total cost of the measures set forth in the contract; except the Secretary may increase the matching cost share where he determines that (1) the main benefits to be derived from the measures are related to improving offsite water quality, and (2) the matching share requirement would place a burden on the landowner which would probably prevent him from participating in the program.
(3) The Secretary may terminate any contract with a landowner or operator by mutual agreement with the owner or operator if the Secretary determines that such termination would be in the public interest, and may agree to such modification of contracts previously entered into as he may determine to be desirable to carry out the purposes of the program or facilitate the practical administration thereof or to accomplish equitable treatment with respect to other conservation, land use, or water quality programs.

(4) In providing assistance under this subsection the Secretary will give priority to those areas and sources that have the most significant effect upon water quality. Additional investigations or plans may be made, where necessary, to supplement approved water quality management plans, in order to determine priorities.

(5) The Secretary shall, where practicable, enter into agreements with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program established in this subsection under regulations developed by the Secretary. Such agreements shall provide for the submission of such reports as the Secretary deems necessary, and for payment by the United States of such portion of the costs incurred in the administration of the program as the Secretary may deem appropriate.

(6) The contracts under this subsection shall be entered into only in areas where the management agency designated under subsection (c)(1) of this section assures an adequate level of participation by owners and operators having control of rural land in such areas. Within such areas the local soil conservation district, where one exists, together with the Secretary of Agriculture, will determine the priority of assistance among individual land owners and operators to assure that the most critical water quality problems are addressed.

(7) The Secretary, in consultation with the Administrator and subject to section 1314(k) of this title, shall, not later than September 30, 1978, promulgate regulations for carrying out this subsection and for support and cooperation with other Federal and non-Federal agencies for implementation of this subsection.

(8) This program shall not be used to authorize or finance projects that would otherwise be eligible for assistance under the terms of Public Law 83-566 [16 U.S.C.A. § 1001 et seq.].

(9) There are hereby authorized to be appropriated to the Secretary of Agriculture $200,000,000 for fiscal year 1979, $400,000,000 for fiscal year 1980, $100,000,000 for fiscal year 1981, $100,000,000 for fiscal year 1982, and such sums as may be necessary for fiscal years 1983 through 1990, to carry out this subsection. The program authorized under this subsection shall be in addition to, and not in substitution of, other programs in such area authorized by this or any other public law.
SUBCHAPTER III: STANDARDS AND ENFORCEMENT

§ 1311. Effluent Limitations [CWA § 301]

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

Except as in compliance with this section and sections 1312, 1316, 1317, 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 1283 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 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, 1989;

(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, 1989;

(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, compliance 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, persistency 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 a toxic pollutant under section 1317(a) of this title, the Administrator shall list the pollutant as a toxic pollutant under section 1317(a) of this title.

(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 are authorized under this subsection if the Administrator determines that adequate test methods and sufficient data are no longer available for determining whether or not modifications may be granted with respect to such pollutant under paragraph (2) of this subsection.

(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 subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction 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 influent, and disinfection, where appropriate. A
municipality 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 respect 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 sewage 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 discharged effluent from such treatment works.
No permit issued under this subsection shall authorize the discharge of any pollutant into
saline estuarine waters which at the time of application 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 protection of public water supplies, shellfish, fish and wildlife or
recreational activities or such other standards necessary to assure support and protection
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. Notwithstanding any other provisions
of this subsection, no permit may be issued under this subsection 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 degrees 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) construction 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 treatment works may request the Administrator
(or if appropriate the State) to issue a permit pursuant 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 appropriate the State) within 180
days after February 4, 1987. The Administrator (or if appropriate the State) may grant
such request and issue or modify such a permit, which shall contain 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 construction 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 section
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 provisions of this chapter.

(2)(A) Where a point source (other than a publicly 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 publicly 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 without 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 or operator 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 Administrator (or if appropriate the State) finds that the owner or operator of such point source has acted in good faith, he may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the point source to achieve the requirements of subsections (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 requirements 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 Administrator (or if appropriate the State) pursuant 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 treatment works pursuant to paragraph (1) of this subsection, but in no event shall it extend beyond July 1, 1988; and no such time modification shall be granted unless (i) the publicly owned treatment works will be in operation and available 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 treatment 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 (iii) 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 modification under subsection (h) 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, 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 an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph 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 or listing comply with effluent limitations under this chapter for all pollutants not the subject of such application or petition.

(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 filed 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) of this section with respect to biological oxygen demand and total suspended solids in the effluent discharged into marine waters.

(B) Application

An application 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 80 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.

(l) 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--

(i) is based solely on information and supporting data submitted to the Administrator
during the rulemaking for establishment of the applicable national effluent limitation
guidelines 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 the application is approved or denied or
the last day that the Administrator has to approve or deny such application.

(5) Treatment of pending applications

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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 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.A. § 1201 et seq.] to any coal remining operation, including the application of such Act to suspended solids.
§ 1312. Water quality related effluent limitations [CWA 302]

(a) Establishment

Whenever, in the judgment of the Administrator or as identified under section 1314(l) 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 in a specific portion of the navigable waters 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.
§ 1313. Water quality standards and implementation plans [CWA § 303]

(a) Existing water quality standards

(1) In order to carry out the purpose of this chapter, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is a waiting approval by, the Administrator pursuant to this Act as in effect immediately prior to October 18, 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall, within three months after October 18, 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(2) Any State which, before October 18, 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after October 18, 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this chapter unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3)(A) Any State which prior to October 18, 1972, has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after October 18, 1972, adopt and submit such standards to the Administrator.

(B) If the Administrator determines that any such standards are consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall approve such standards.

(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

(b) Proposed regulations

(1) The Administrator shall promptly prepare and publish proposed regulations setting
forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, if--

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section.

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

(c) Review; revised standards; publication

(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

(2)(A) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 1317(a)(1) of this title for which criteria have been published under section 1314(a) of this title, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 1314(a)(8) of this title. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or
previously adopted numerical criteria.

(3) If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this chapter, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved--

(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.

The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this chapter.

(d) Identification of areas with insufficient controls; maximum daily load; certain effluent limitations revision

(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 1311 of this title are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship
between effluent limitations and water quality.

(D) Each State shall estimate for the waters identified in paragraph (1)(B) of this subsection the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

(2) Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 1314(a)(2)(D) of this title, for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection. The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

(3) For the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B) of this subsection and estimate for such waters the total maximum daily load with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish, and wildlife.

(4) Limitations on revision of certain effluent limitations

(A) Standard not attained

For waters identified under paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section may be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard, or (ii) the designated use which is not being attained is removed in accordance with regulations established under this section.
(B) Standard attained

For waters identified under paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters or otherwise required by applicable water quality standards, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or any water quality standard established under this section, or any other permitting standard may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.

(e) Continuing planning process

(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this chapter.

(2) Each State shall submit not later than 120 days after October 18, 1972, to the Administrator for his approval a proposed continuing planning process which is consistent with this chapter. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this chapter. The Administrator shall not approve any State permit program under subchapter IV of this chapter for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 1311(b)(1), section 1311(b)(2), section 1316, and section 1317 of this title, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable area-wide waste management plans under section 1288 of this title, and applicable basin plans under section 1289 of this title;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;
(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 1311 and 1312 of this title.

(f) Earlier compliance

Nothing in this section shall be construed to affect any effluent limitation, or schedule of compliance required by any State to be implemented prior to the dates set forth in sections 1311(b)(1) and 1311(b)(2) of this title nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

(g) Heat standards

Water quality standards relating to heat shall be consistent with the requirements of section 1326 of this title.

(h) Thermal water quality standards

For the purposes of this chapter the term “water quality standards” includes thermal water quality standards.

(i) Coastal recreation water quality criteria

(1) Adoption by States

(A) Initial criteria and standards

Not later than 42 months after October 10, 2000, each State having coastal recreation waters shall adopt and submit to the Administrator water quality criteria and standards for the coastal recreation waters of the State for those pathogens and pathogen indicators for which the Administrator has published criteria under section 1314(a) of this title.

(B) New or revised criteria and standards

Not later than 36 months after the date of publication by the Administrator of new or revised water quality criteria under section 1314(a)(9) of this title, each State having coastal recreation waters shall adopt and submit to the Administrator new or revised water quality standards for the coastal recreation waters of the State for all pathogens and pathogen indicators to which the new or revised water quality criteria are applicable.

(2) Failure of States to adopt

(A) In general
If a State fails to adopt water quality criteria and standards in accordance with paragraph (1)(A) that are as protective of human health as the criteria for pathogens and pathogen indicators for coastal recreation waters published by the Administrator, the Administrator shall promptly propose regulations for the State setting forth revised or new water quality standards for pathogens and pathogen indicators described in paragraph (1)(A) for coastal recreation waters of the State.

(B) Exception

If the Administrator proposes regulations for a State described in subparagraph (A) under subsection (c)(4)(B) of this section, the Administrator shall publish any revised or new standard under this subsection not later than 42 months after October 10, 2000.

(3) Applicability

Except as expressly provided by this subsection, the requirements and procedures of subsection (c) of this section apply to this subsection, including the requirement in subsection (c)(2)(A) of this section that the criteria protect public health and welfare.

§ 1313a. Revised water quality standards [CWA 303a]

The review, revision, and adoption or promulgation of revised or new water quality standards pursuant to section 303(c) of the Federal Water Pollution Control Act [33 U.S.C.A. § 1313(c)] shall be completed by the date three years after December 29, 1981. No grant shall be made under title II of the Federal Water Pollution Control Act [33 U.S.C.A. § 1281 et seq.] after such date until water quality standards are reviewed and revised pursuant to section 303(c), except where the State has in good faith submitted such revised water quality standards and the Administrator has not acted to approve or disapprove such submission within one hundred and twenty days of receipt.

§ 1314 Information and guidelines [CWA § 304]

(a) Criteria development and publication

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for
varying types of receiving waters.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) information (A) on the factors necessary to restore and maintain the chemical, physical, and biological integrity of all navigable waters, ground waters, waters of the contiguous zone, and the oceans; (B) on the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters and to allow recreational activities in and on the water; and (C) on the measurement and classification of water quality; and (D) for the purpose of section 1313 of this title, on and the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.

(3) Such criteria and information and revisions thereof shall be issued to the States and shall be published in the Federal Register and otherwise made available to the public.

(4) The Administrator shall, within 90 days after December 27, 1977, and from time to time thereafter, publish and revise as appropriate information identifying conventional pollutants, including but not limited to, pollutants classified as biological oxygen demanding, suspended solids, fecal coliform, and pH. The thermal component of any discharge shall not be identified as a conventional pollutant under this paragraph.

(5)(A) The Administrator, to the extent practicable before consideration of any request under section 1311(g) of this title and within six months after December 27, 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(B) The Administrator, to the extent practicable before consideration of any application under section 1311(h) of this title and within six months after December 27, 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(6) The Administrator shall, within three months after December 27, 1977, and annually thereafter, for purposes of section 1311(h) of this title publish and revise as appropriate information identifying each water quality standard in effect under this chapter or State law, the specific pollutants associated with such water quality standard, and the particular waters to which such water quality standard applies.

(7) Guidance to states

The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within 9 months after February 4, 1987, guidance to the States on performing the identification required by subsection (l)(1) of this section.
(8) Information on water quality criteria

The Administrator, after consultation with appropriate State agencies and within 2 years after February 4, 1987, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.

(9) Revised criteria for coastal recreation waters

(A) In general

Not later than 5 years after October 10, 2000, after consultation and in cooperation with appropriate Federal, State, tribal, and local officials (including local health officials), the Administrator shall publish new or revised water quality criteria for pathogens and pathogen indicators (including a revised list of testing methods, as appropriate), based on the results of the studies conducted under section 1254(v) of this title, for the purpose of protecting human health in coastal recreation waters.

(B) Reviews

Not later than the date that is 5 years after the date of publication of water quality criteria under this paragraph, and at least once every 5 years thereafter, the Administrator shall review and, as necessary, revise the water quality criteria.

(b) Effluent limitation guidelines

For the purpose of adopting or revising effluent limitations under this chapter the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of October 18, 1972, regulations, providing guidelines for effluent limitations, and, at least annually thereafter, revise, if appropriate, such regulations. Such regulations shall--

(1)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best practicable control technology currently available for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the control measures and practices to be applicable to point sources (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best practicable control technology currently available to comply with subsection (b)(1) of section 1311 of this title shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process
changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(2)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best measures and practices available to comply with subsection (b)(2) of section 1311 of this title to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(3) identify control measures and practices available to eliminate the discharge of pollutants from categories and classes of point sources, taking into account the cost of achieving such elimination of the discharge of pollutants; and

(4)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best conventional pollutant control technology (including measures and practices) for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best conventional pollutant control technology measures and practices to comply with section 1311(b)(2)(E) of this title to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best conventional pollutant control technology (including measures and practices) shall include consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources, and shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate.

(c) Pollution discharge elimination procedures
The Administrator, after consultation, with appropriate Federal and State agencies and other interested persons, shall issue to the States and appropriate water pollution control agencies within 270 days after October 18, 1972 (and from time to time thereafter) information on the processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 1316 of this title. Such information shall include technical and other data, including costs, as are available on alternative methods of elimination or reduction of the discharge of pollutants. Such information, and revisions thereof, shall be published in the Federal Register and otherwise shall be made available to the public.

(d) Secondary treatment information; alternative waste treatment management techniques; innovative and alternative wastewater treatment processes; facilities deemed equivalent of secondary treatment

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within sixty days after October 18, 1972 (and from time to time thereafter) information, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within nine months after October 18, 1972 (and from time to time thereafter) information on alternative waste treatment management techniques and systems available to implement section 1281 of this title.

(3) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall promulgate within one hundred and eighty days after December 27, 1977, guidelines for identifying and evaluating innovative and alternative wastewater treatment processes and techniques referred to in section 1281(g)(5) of this title.

(4) For the purposes of this subsection, such biological treatment facilities as oxidation ponds, lagoons, and ditches and trickling filters shall be deemed the equivalent of secondary treatment. The Administrator shall provide guidance under paragraph (1) of this subsection on design criteria for such facilities, taking into account pollutant removal efficiencies and, consistent with the objectives of this chapter, assuring that water quality will not be adversely affected by deeming such facilities as the equivalent of secondary treatment.

(e) Best management practices for industry

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, may publish regulations, supplemental to any effluent limitations specified under subsections (b) and (c) of this section for a class or category of point sources, for any specific pollutant which the Administrator is charged with a duty to regulate as a toxic or hazardous pollutant under section 1317(a)(1) or 1321 of this
title, to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which the Administrator determines are associated with or ancillary to the industrial manufacturing or treatment process within such class or category of point sources and may contribute significant amounts of such pollutants to navigable waters. Any applicable controls established under this subsection shall be included as a requirement for the purposes of section 1311, 1312, 1316, 1317, or 1343 of this title, as the case may be, in any permit issued to a point source pursuant to section 1342 of this title.

(f) Identification and evaluation of nonpoint sources of pollution; processes, procedures, and methods to control pollution

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall issue to appropriate Federal agencies, the States, water pollution control agencies, and agencies designated under section 1288 of this title, within one year after October 18, 1972 (and from time to time thereafter) information including (1) guidelines for identifying and evaluating the nature and extent of nonpoint sources of pollutants, and (2) processes, procedures, and methods to control pollution resulting from--

(A) agricultural and silvicultural activities, including runoff from fields and crop and forest lands;

(B) mining activities, including runoff and siltation from new, currently operating, and abandoned surface and underground mines;

(C) all construction activity, including runoff from the facilities resulting from such construction;

(D) the disposal of pollutants in wells or in subsurface excavations;

(E) salt water intrusion resulting from reductions of fresh water flow from any cause, including extraction of ground water, irrigation, obstruction, and diversion; and

(F) changes in the movement, flow, or circulation of any navigable waters or ground waters, including changes caused by the construction of dams, levees, channels, causeways, or flow diversion facilities.

Such information and revisions thereof shall be published in the Federal Register and otherwise made available to the public.

(g) Guidelines for pretreatment of pollutants

(1) For the purpose of assisting States in carrying out programs under section 1342 of this title, the Administrator shall publish, within one hundred and twenty days after October 18, 1972, and review at least annually thereafter and, if appropriate, revise guidelines for pretreatment of pollutants which he determines are not susceptible to treatment by
publicly owned treatment works. Guidelines under this subsection shall be established to control and prevent the discharge into the navigable waters, the contiguous zone, or the ocean (either directly or through publicly owned treatment works) of any pollutant which interferes with, passes through, or otherwise is incompatible with such works.

(2) When publishing guidelines under this subsection, the Administrator shall designate the category or categories of treatment works to which the guidelines shall apply.

(h) Test procedures guidelines

The Administrator shall, within one hundred and eighty days from October 18, 1972, promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 1341 of this title or permit application pursuant to section 1342 of this title.

(i) Guidelines for monitoring, reporting, enforcement, funding, personnel, and manpower

The Administrator shall (1) within sixty days after October 18, 1972, promulgate guidelines for the purpose of establishing uniform application forms and other minimum requirements for the acquisition of information from owners and operators of point-sources of discharge subject to any State program under section 1342 of this title, and (2) within sixty days from October 18, 1972, promulgate guidelines establishing the minimum procedural and other elements of any State program under section 1342 of this title, which shall include:

(A) monitoring requirements;

(B) reporting requirements (including procedures to make information available to the public);

(C) enforcement provisions; and

(D) funding, personnel qualifications, and manpower requirements (including a requirement that no board or body which approves permit applications or portions thereof shall include, as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit).

(j) Lake restoration guidance manual

The Administrator shall, within 1 year after February 4, 1987, and biennially thereafter, publish and disseminate a lake restoration guidance manual describing methods, procedures, and processes to guide State and local efforts to improve, restore, and enhance water quality in the Nation's publicly owned lakes.

(k) Agreements with Secretaries of Agriculture, Army, and the Interior to provide maximum utilization of programs to achieve and maintain water quality; transfer of
funds; authorization of appropriations

(1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 1288 of this title and nonpoint source pollution management programs approved under section 1329 of this title.

(2) The Administrator is authorized to transfer to the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, any funds appropriated under paragraph (3) of this subsection to supplement funds otherwise appropriated to programs authorized pursuant to any agreement under paragraph (1).

(3) There is authorized to be appropriated to carry out the provisions of this subsection, $100,000,000 per fiscal year for the fiscal years 1979 through 1983 and such sums as may be necessary for fiscal years 1984 through 1990.

(1) Individual control strategies for toxic pollutants

(1) State list of navigable waters and development of strategies

Not later than 2 years after February 4, 1987, each State shall submit to the Administrator for review, approval, and implementation under this subsection--

(A) a list of those waters within the State which after the application of effluent limitations required under section 1311(b)(2) of this title cannot reasonably be anticipated to attain or maintain (i) water quality standards for such waters reviewed, revised, or adopted in accordance with section 1313(c)(2)(B) of this title, due to toxic pollutants, or (ii) 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;

(B) a list of all navigable waters in such State for which the State does not expect the applicable standard under section 1313 of this title will be achieved after the requirements of sections 1311(b), 1316, and 1317(b) of this title are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 1317(a) of this title;

(C) for each segment of the navigable waters included on such lists, a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source; and
(D) for each such segment, an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State under this paragraph through the establishment of effluent limitations under section 1342 of this title and water quality standards under section 1313(c)(2)(B) of this title, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than 3 years after the date of the establishment of such strategy.

(2) Approval or disapproval

Not later than 120 days after the last day of the 2-year period referred to in paragraph (1), the Administrator shall approve or disapprove the control strategies submitted under paragraph (1) by any State.

(3) Administrator's action

If a State fails to submit control strategies in accordance with paragraph (1) or the Administrator does not approve the control strategies submitted by such State in accordance with paragraph (1), then, not later than 1 year after the last day of the period referred to in paragraph (2), the Administrator, in cooperation with such State and after notice and opportunity for public comment, shall implement the requirements of paragraph (1) in such State. In the implementation of such requirements, the Administrator shall, at a minimum, consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after such last day.

(m) Schedule for review of Guidelines

(1) Publication

Within 12 months after February 4, 1987, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall--

(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with subsection (b) of this section;

(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 1316 of this title have not previously been published; and

(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than 4 years after February 4, 1987, for categories identified in the first published plan or 3 years after the publication of the plan for categories identified in later published plans.

(2) Public review
The Administrator shall provide for public review and comment on the plan prior to final publication.

§ 1316. National standards of performance [CWA § 306]

(a) Definitions

For purposes of this section:

(1) The term “standard of performance” means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(2) The term “new source” means any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under this section which will be applicable to such source, if such standard is thereafter promulgated in accordance with this section.

(3) The term “source” means any building, structure, facility, or installation from which there is or may be the discharge of pollutants.

(4) The term “owner or operator” means any person who owns, leases, operates, controls, or supervises a source.

(5) The term “construction” means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

(b) Categories of sources; Federal standards of performance for new sources

(1)(A) The Administrator shall, within ninety days after October 18, 1972, publish (and from time to time thereafter shall revise) a list of categories of sources, which shall, at the minimum, include:

pulp and paper mills;

paperboard, builders paper and board mills;

meat product and rendering processing;

dairy product processing;

grain mills;
canned and preserved fruits and vegetables processing;
canned and preserved seafood processing;
sugar processing;
textile mills;
cement manufacturing;
feedlots;
electroplating;
organic chemicals manufacturing;
inorganic chemicals manufacturing;
plastic and synthetic materials manufacturing;
soap and detergent manufacturing;
fertilizer manufacturing;
petroleum refining;
iron and steel manufacturing;
nonferrous metals manufacturing;
phosphate manufacturing;
steam electric powerplants;
ferroalloy manufacturing;
leather tanning and finishing;
glass and asbestos manufacturing;
rubber processing; and

timber products processing.

(B) As soon as practicable, but in no case more than one year, after a category of sources is included in a list under subparagraph (A) of this paragraph, the Administrator shall propose and publish regulations establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such
comments, he shall promulgate, within one hundred and twenty days after publication of such proposed regulations, such standards with such adjustments as he deems appropriate. The Administrator shall, from time to time, as technology and alternatives change, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance, or revisions thereof, shall become effective upon promulgation. In establishing or revising Federal standards of performance for new sources under this section, the Administrator shall take into consideration the cost of achieving such effluent reduction, and any non-water quality, environmental impact and energy requirements.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards and shall consider the type of process employed (including whether batch or continuous).

(3) The provisions of this section shall apply to any new source owned or operated by the United States.

(c) State enforcement of standards of performance

Each State may develop and submit to the Administrator a procedure under State law for applying and enforcing standards of performance for new sources located in such State. If the Administrator finds that the procedure and the law of any State require the application and enforcement of standards of performance to at least the same extent as required by this section, such State is authorized to apply and enforce such standards of performance (except with respect to new sources owned or operated by the United States).

(d) Protection from more stringent standards

Notwithstanding any other provision of this chapter, any point source the construction of which is commenced after October 18, 1972, and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of Title 26, whichever period ends first.

(e) Illegality of operation of new sources in violation of applicable standards of performance

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.
§ 1317. Toxic and pretreatment effluent standards [CWA § 307]

(a) Toxic pollutant list; revision; hearing; promulgation of standards; effective date; consultation

(1) On and after December 27, 1977, the list of toxic pollutants or combination of pollutants subject to this chapter shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth day after December 27, 1977, that list. From time to time thereafter, the Administrator may revise such list and the Administrator is authorized to add to or remove from such list any pollutant. The Administrator in publishing any revised list, including the addition or removal of any pollutant from such list, shall take into account toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms. A determination of the Administrator under this paragraph shall be final except that if, on judicial review, such determination was based on arbitrary and capricious action of the Administrator, the Administrator shall make a redetermination.

(2) Each toxic pollutant listed in accordance with paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title. The Administrator, in his discretion, may publish in the Federal Register a proposed effluent standard (which may include a prohibition) establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, shall be applicable to such category or class only if such standard imposes more stringent requirements. Such published effluent standard (or prohibition) shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority. The Administrator shall allow a period of not less than sixty days following publication of any such proposed effluent standard (or prohibition) for written comment by interested persons on such proposed standard. In addition, if within thirty days of publication of any such proposed effluent standard (or prohibition) any interested person so requests, the Administrator shall hold a public hearing in connection therewith. Such a public hearing shall provide an opportunity for oral and written presentations, such cross-examination as the Administrator determines is appropriate on disputed issues of material fact, and the transcription of a verbatim record which shall be available to the public. After consideration of such comments and any information and material presented at any public hearing held on such proposed standard or prohibition, the Administrator shall promulgate such standard (or prohibition) with such modification as the Administrator
finds are justified. Such promulgation by the Administrator shall be made within two hundred and seventy days after publication of proposed standard (or prohibition). Such standard (or prohibition) shall be final except that if, on judicial review, such standard was not based on substantial evidence, the Administrator shall promulgate a revised standard. Effluent limitations shall be established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title for every toxic pollutant referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives as soon as practicable after December 27, 1977, but no later than July 1, 1980. Such effluent limitations or effluent standards (or prohibitions) shall be established for every other toxic pollutant listed under paragraph (1) of this subsection as soon as practicable after it is so listed.

(3) Each such effluent standard (or prohibition) shall be reviewed and, if appropriate, revised at least every three years.

(4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.

(5) When proposing or promulgating any effluent standard (or prohibition) under this section, the Administrator shall designate the category or categories of sources to which the effluent standard (or prohibition) shall apply. Any disposal of dredged material may be included in such a category of sources after consultation with the Secretary of the Army.

(6) Any effluent standard (or prohibition) established pursuant to this section shall take effect on such date or dates as specified in the order promulgating such standard, but in no case, more than one year from the date of such promulgation. If the Administrator determines that compliance within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for such category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

(7) Prior to publishing any regulations pursuant to this section the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, States, independent experts, and Federal departments and agencies.

(b) Pretreatment standards; hearing; promulgation; compliance period; revision; application to State and local laws

(1) The Administrator shall, within one hundred and eighty days after October 18, 1972, and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 1292 of this title) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and
after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 1292 of this title) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works. If, in the case of any toxic pollutant under subsection (a) of this section introduced by a source into a publicly owned treatment works, the treatment by such works removes all or any part of such toxic pollutant and the discharge from such works does not violate that effluent limitation or standard which would be applicable to such toxic pollutant if it were discharged by such source other than through a publicly owned treatment works, and does not prevent sludge use or disposal by such works in accordance with section 1345 of this title, then the pretreatment requirements for the sources actually discharging such toxic pollutant into such publicly owned treatment works may be revised by the owner or operator of such works to reflect the removal of such toxic pollutant by such works.

(2) The Administrator shall, from time to time, as control technology, processes, operating methods, or other alternatives change, revise such standards following the procedure established by this subsection for promulgation of such standards.

(3) When proposing or promulgating any pretreatment standard under this section, the Administrator shall designate the category or categories of sources to which such standard shall apply.

(4) Nothing in this subsection shall affect any pretreatment requirement established by any State or local law not in conflict with any pretreatment standard established under this subsection.

(c) New sources of pollutants into publicly owned treatment works

In order to insure that any source introducing pollutants into a publicly owned treatment works, which source would be a new source subject to section 1316 of this title if it were to discharge pollutants, will not cause a violation of the effluent limitations established for any such treatment works, the Administrator shall promulgate pretreatment standards for the category of such sources simultaneously with the promulgation of standards of performance under section 1316 of this title for the equivalent category of new sources. Such pretreatment standards shall prevent the discharge of any pollutant into such treatment works, which pollutant may interfere with, pass through, or otherwise be incompatible with such works.

(d) Operation in violation of standards unlawful

After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard.
(e) Compliance date extension for innovative pretreatment systems

In the case of any existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 1311(k) of this title, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed 2 years--

(1) if the Administrator determines that the innovative system has the potential for industrywide application, and

(2) if the Administrator (or the State in consultation with the Administrator, in any case in which the State has a pretreatment program approved by the Administrator)--

(A) determines that the proposed extension will not cause the publicly owned treatment works to be in violation of its permit under section 1342 of this title or of section 1345 of this title or to contribute to such a violation, and

(B) concurs with the proposed extension.

§ 1318. Records and reports; inspections [CWA § 308]

(a) Maintenance; monitoring equipment; entry; access to information

Whenever required to carry out the objective of this chapter, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 1315, 1321, 1342, 1344 (relating to State permit programs), 1345, and 1364 of this title--

(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and

(B) the Administrator or his authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of his credentials--
(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

(b) Availability to public; trade secrets exception; penalty for disclosure of confidential information

Any records, reports, or information obtained under this section (1) shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards, and (2) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18. Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than $1,000 or imprisoned not more than 1 year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

(c) Application of State law

Each State may develop and submit to the Administrator procedures under State law for inspection, monitoring, and entry with respect to point sources located in such State. If the Administrator finds that the procedures and the law of any State relating to inspection, monitoring, and entry are applicable to at least the same extent as those required by this section, such State is authorized to apply and enforce its procedures for inspection, monitoring, and entry with respect to point sources located in such State (except with respect to point sources owned or operated by the United States).

(d) Access by Congress

Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of Congress, to such committee.
§ 1319. Enforcement [CWA § 309]

(a) State enforcement; compliance orders

(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title in a permit issued by a State under an approved permit program under section 1342 or 1344 of this title, he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of permit conditions or limitations as set forth in paragraph (1) of this subsection are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such conditions and limitations (hereafter referred to in this section as the period of “federally assumed enforcement”), except where an extension has been granted under paragraph (5)(B) of this subsection, the Administrator shall enforce any permit condition or limitation with respect to any person--

(A) by issuing an order to comply with such condition or limitation, or

(B) by bringing a civil action under subsection (b) of this section.

(3) Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by him or by a State or in a permit issued under section 1344 of this title by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.

(4) A copy of any order issued under this subsection shall be sent immediately by the Administrator to the State in which the violation occurs and other affected States. In any case in which an order under this subsection (or notice to a violator under paragraph (1) of this subsection) is issued to a corporation, a copy of such order (or notice) shall be served on any appropriate corporate officers. An order issued under this subsection relating to a violation of section 1318 of this title shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the
alleged violation.

(5)(A) Any order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a time the Administrator determines to be reasonable in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(B) The Administrator may, if he determines (i) that any person who is a violator of, or any person who is otherwise not in compliance with, the time requirements under this chapter or in any permit issued under this chapter, has acted in good faith, and has made a commitment (in the form of contracts or other securities) of necessary resources to achieve compliance by the earliest possible date after July 1, 1977, but not later than April 1, 1979; (ii) that any extension under this provision will not result in the imposition of any additional controls on any other point or nonpoint source; (iii) that an application for a permit under section 1342 of this title was filed for such person prior to December 31, 1974; and (iv) that the facilities necessary for compliance with such requirements are under construction, grant an extension of the date referred to in section 1311(b)(1)(A) of this title to a date which will achieve compliance at the earliest time possible but not later than April 1, 1979.

(6) Whenever, on the basis of information available to him, the Administrator finds (A) that any person is in violation of section 1311(b)(1)(A) or (C) of this title, (B) that such person cannot meet the requirements for a time extension under section 1311(i)(2) of this title, and (C) that the most expeditious and appropriate means of compliance with this chapter by such person is to discharge into a publicly owned treatment works, then, upon request of such person, the Administrator may issue an order requiring such person to comply with this chapter at the earliest date practicable, but not later than July 1, 1983, by discharging into a publicly owned treatment works if such works concur with such order. Such order shall include a schedule of compliance.

(b) Civil actions

The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under subsection (a) of this section. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.

(c) Criminal penalties

(1) Negligent violations
Any person who--

(A) negligently violates section 1311, 1312, 1316, 1317, 1318, 1321(b)(3), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State; or

(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, State, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 1342 of this title by the Administrator or a State;

shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or by both.

(2) Knowing violations

Any person who--

(A) knowingly violates section 1311, 1312, 1316, 1317, 1318, 1321(b)(3), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State; or

(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable Federal, State, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 1342 of this title by the Administrator or a State;

shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or by imprisonment of not more than 6 years, or by both.

(3) Knowing endangerment
(A) General rule

Any person who knowingly violates section 1311, 1312, 1313, 1316, 1317, 1318, 1321(b)(3), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both fine and imprisonment.

(B) Additional provisions

For the purpose of subparagraph (A) of this paragraph--

(i) in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury--

(I) the person is responsible only for actual awareness or actual belief that he possessed; and

(II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information;

(ii) it is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of--

(I) an occupation, a business, or a profession; or

(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent;

and such defense may be established under this subparagraph by a preponderance of the evidence;

(iii) the term “organization” means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association,
firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons; and

(iv) the term “serious bodily injury” means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(4) False statements

Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both.

(5) Treatment of single operational upset

For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(6) Responsible corporate officer as “person”

For the purpose of this subsection, the term “person” means, in addition to the definition contained in section 1362(5) of this title, any responsible corporate officer.

(7) Hazardous substance defined

For the purpose of this subsection, the term “hazardous substance” means (A) any substance designated pursuant to section 1321(b)(2)(A) of this title, (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of Title 42, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C.A. § 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C.A. § 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 1317(a) of this title, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 2606 of Title 15.

(d) Civil penalties; factors considered in determining amount

Any person who violates section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator, or by a State, or in a permit
issued under section 1344 of this title by a State, or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed $25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(e) State liability for judgments and expenses

Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against the municipality in such action to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment.

(f) Wrongful introduction of pollutant into treatment works

Whenever, on the basis of any information available to him, the Administrator finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of subsection (d) of section 1317 of this title, the Administrator may notify the owner or operator of such treatment works and the State of such violation. If the owner or operator of the treatment works does not commence appropriate enforcement action within 30 days of the date of such notification, the Administrator may commence a civil action for appropriate relief, including but not limited to, a permanent or temporary injunction, against the owner or operator of such treatment works. In any such civil action the Administrator shall join the owner or operator of such source as a party to the action. Such action shall be brought in the district court of the United States in the district in which the treatment works is located. Such court shall have jurisdiction to restrain such violation and to require the owner or operator of the treatment works and the owner or operator of the source to take such action as may be necessary to come into compliance with this chapter. Notice of commencement of any such action shall be given to the State. Nothing in this subsection shall be construed to limit or prohibit any other authority the Administrator may have under this chapter.

(g) Administrative penalties

(1) Violations

Whenever on the basis of any information available--
(A) the Administrator finds that any person has violated section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or has violated any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or in a permit issued under section 1344 of this title by a State, or

(B) the Secretary of the Army (hereinafter in this subsection referred to as the “Secretary”) finds that any person has violated any permit condition or limitation in a permit issued under section 1344 of this title by the Secretary,

the Administrator or Secretary, as the case may be, may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty under this subsection.

(2) Classes of penalties

(A) Class I

The amount of a class I civil penalty under paragraph (1) may not exceed $10,000 per violation, except that the maximum amount of any class I civil penalty under this subparagraph shall not exceed $25,000. Before issuing an order assessing a civil penalty under this subparagraph, the Administrator or the Secretary, as the case may be, shall give to the person to be assessed such penalty written notice of the Administrator's or Secretary's proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of Title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

(B) Class II

The amount of a class II civil penalty under paragraph (1) may not exceed $10,000 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed $125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with section 554 of Title 5. The Administrator and the Secretary may issue rules for discovery procedures for hearings under this subparagraph.

(3) Determining amount

In determining the amount of any penalty assessed under this subsection, the Administrator or the Secretary, as the case may be, shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. For purposes of this subsection, a single operational upset which...
leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(4) Rights of interested persons

(A) Public notice

Before issuing an order assessing a civil penalty under this subsection the Administrator or Secretary, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order.

(B) Presentation of evidence

Any person who comments on a proposed assessment of a penalty under this subsection shall be given notice of any hearing held under this subsection and of the order assessing such penalty. In any hearing held under this subsection, such person shall have a reasonable opportunity to be heard and to present evidence.

(C) Rights of interested persons to a hearing

If no hearing is held under paragraph (2) before issuance of an order assessing a penalty under this subsection, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in accordance with paragraph (2)(A) in the case of a class I civil penalty and paragraph (2)(B) in the case of a class II civil penalty. If the Administrator or Secretary denies a hearing under this subparagraph, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

(5) Finality of order

An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (8) or a hearing is requested under paragraph (4)(C). If such a hearing is denied, such order shall become final 30 days after such denial.

(6) Effect of order

(A) Limitation on actions under other sections

Action taken by the Administrator or the Secretary, as the case may be, under this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this chapter; except that any violation--
(i) with respect to which the Administrator or the Secretary has commenced and is diligently prosecuting an action under this subsection,

(ii) with respect to which a State has commenced and is diligently prosecuting an action under a State law comparable to this subsection, or

(iii) for which the Administrator, the Secretary, or the State has issued a final order not subject to further judicial review and the violator has paid a penalty assessed under this subsection, or such comparable State law, as the case may be,

shall not be the subject of a civil penalty action under subsection (d) of this section or section 1321(b) of this title or section 1365 of this title.

(B) Applicability of limitation with respect to citizen suits

The limitations contained in subparagraph (A) on civil penalty actions under section 1365 of this title shall not apply with respect to any violation for which--

(i) a civil action under section 1365(a)(1) of this title has been filed prior to commencement of an action under this subsection, or

(ii) notice of an alleged violation of section 1365(a)(1) of this title has been given in accordance with section 1365(b)(1)(A) of this title prior to commencement of an action under this subsection and an action under section 1365(a)(1) of this title with respect to such alleged violation is filed before the 120th day after the date on which such notice is given.

(7) Effect of action on compliance

No action by the Administrator or the Secretary under this subsection shall affect any person's obligation to comply with any section of this chapter or with the terms and conditions of any permit issued pursuant to section 1342 or 1344 of this title.

(8) Judicial review

Any person against whom a civil penalty is assessed under this subsection or who commented on the proposed assessment of such penalty in accordance with paragraph (4) may obtain review of such assessment--

(A) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred, or

(B) in the case of assessment of a class II civil penalty, in United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business,
by filing a notice of appeal in such court within the 30-day period beginning on the date
the civil penalty order is issued and by simultaneously sending a copy of such notice by
certified mail to the Administrator or the Secretary, as the case may be, and the Attorney
General. The Administrator or the Secretary shall promptly file in such court a certified
copy of the record on which the order was issued. Such court shall not set aside or
remand such order unless there is not substantial evidence in the record, taken as a whole,
to support the finding of a violation or unless the Administrator's or Secretary's
assessment of the penalty constitutes an abuse of discretion and shall not impose
additional civil penalties for the same violation unless the Administrator's or Secretary's
assessment of the penalty constitutes an abuse of discretion.

(9) Collection

If any person fails to pay an assessment of a civil penalty--

(A) after the order making the assessment has become final, or

(B) after a court in an action brought under paragraph (8) has entered a final judgment in
favor of the Administrator or the Secretary, as the case may be,

the Administrator or the Secretary shall request the Attorney General to bring a civil
action in an appropriate district court to recover the amount assessed (plus interest at
currently prevailing rates from the date of the final order or the date of the final
judgment, as the case may be). In such an action, the validity, amount, and
appropriateness of such penalty shall not be subject to review. Any person who fails to
pay on a timely basis the amount of an assessment of a civil penalty as described in the
first sentence of this paragraph shall be required to pay, in addition to such amount and
interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment
penalty for each quarter during which such failure to pay persists. Such nonpayment
penalty shall be in an amount equal to 20 percent of the aggregate amount of such
person's penalties and nonpayment penalties which are unpaid as of the beginning of such
quarter.

(10) Subpoenas

The Administrator or Secretary, as the case may be, may issue subpoenas for the
attendance and testimony of witnesses and the production of relevant papers, books, or
documents in connection with hearings under this subsection. In case of contumacy or
refusal to obey a subpoena issued pursuant to this paragraph and served upon any person,
the district court of the United States for any district in which such person is found,
resides, or transacts business, upon application by the United States and after notice to
such person, shall have jurisdiction to issue an order requiring such person to appear and
give testimony before the administrative law judge or to appear and produce documents
before the administrative law judge, or both, and any failure to obey such order of the
court may be punished by such court as a contempt thereof.

(11) Protection of existing procedures
Nothing in this subsection shall change the procedures existing on the day before February 4, 1987, under other subsections of this section for issuance and enforcement of orders by the Administrator.

§ 1323. Federal facilities pollution control [CWA § 313]

(a) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement, whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. Nothing in this section shall be construed to prevent any department, agency, or instrumentality of the Federal Government, or any officer, agent, or employee thereof in the performance of his official duties, from removing to the appropriate Federal district court any proceeding to which the department, agency, or instrumentality or officer, agent, or employee thereof is subject pursuant to this section, and any such proceeding may be removed in accordance with section 1441 et seq. of Title 28. No officer, agent, or employee of the United States shall be personally liable for any civil penalty arising from the performance of his official duties, for which he is not otherwise liable, and the United States shall be liable only for those civil penalties arising under Federal law or imposed by a State or local court to enforce an order or the process of such court. The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any such a requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption may be granted from the requirements of section 1316 or 1317 of this title. No such exemptions shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption. In addition to any such exemption of a particular effluent source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vessels, vehicles, or
other classes or categories of property, and access to such property, which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals.

(b)(1) The Administrator shall coordinate with the head of each department, agency, or instrumentality of the Federal Government having jurisdiction over any property or facility utilizing federally owned wastewater facilities to develop a program of cooperation for utilizing wastewater control systems utilizing those innovative treatment processes and techniques for which guidelines have been promulgated under section 1314(d)(3) of this title. Such program shall include an inventory of property and facilities which could utilize such processes and techniques.

(2) Construction shall not be initiated for facilities for treatment of wastewater at any Federal property or facility after September 30, 1979, if alternative methods for wastewater treatment at such property or facility utilizing innovative treatment processes and techniques, including but not limited to methods utilizing recycle and reuse techniques and land treatment are not utilized, unless the life cycle cost of the alternative treatment works exceeds the life cycle cost of the most cost effective alternative by more than 15 per centum. The Administrator may waive the application of this paragraph in any case where the Administrator determines it to be in the public interest, or that compliance with this paragraph would interfere with the orderly compliance with conditions of a permit issued pursuant to section 1342 of this title.

§ 1326. Thermal discharges [CWA § 316]

(a) Effluent limitations that will assure protection and propagation of balanced, indigenous population of shellfish, fish, and wildlife

With respect to any point source otherwise subject to the provisions of section 1311 of this title or section 1316 of this title, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the projection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections for such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on that body of water.

(b) Cooling water intake structures
Any standard established pursuant to section 1311 of this title or section 1316 of this title and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(c) Period of protection from more stringent effluent limitations following discharge point source modification commenced after October 18, 1972

Notwithstanding any other provision of this chapter, any point source of a discharge having a thermal component, the modification of which point source is commenced after October 18, 1972, and which, as modified, meets effluent limitations established under section 1311 of this title or, if more stringent, effluent limitations established under section 1313 of this title and which effluent limitations will assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the thermal component of its discharge during a ten year period beginning on the date of completion of such modification or during the period of depreciation or amortization of such facility for the purpose of section 167 or 169 (or both) of Title 26, whichever period ends first.

§ 1329 Nonpoint source management programs [CWA § 319]

(a) State assessment reports

(1) Contents

The Governor of each State shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval, a report which--

(A) identifies those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this chapter;

(B) identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

(C) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and
(D) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsections (h) and (i) of this section.

(2) Information used in preparation

In developing the report required by this section, the State (A) may rely upon information developed pursuant to sections 1288, 1313(e), 1314(f), 1315(b), and 1324 of this title, and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to sections 1288(b) and 1313 of this title, to the extent such elements are consistent with and fulfill the requirements of this section.

(b) State management programs

(1) In general

The Governor of each State, for that State or in combination with adjacent States, shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program which such State proposes to implement in the first four fiscal years beginning after the date of submission of such management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters.

(2) Specific contents

Each management program proposed for implementation under this subsection shall include each of the following:

(A) An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under paragraph (1)(B), taking into account the impact of the practice on ground water quality.

(B) An identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (A).

(C) A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.
(D) A certification of the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) that the laws of the State or States, as the case may be, provide adequate authority to implement such management program or, if there is not such adequate authority, a list of such additional authorities as will be necessary to implement such management program. A schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.

(E) Sources of Federal and other assistance and funding (other than assistance provided under subsections (h) and (i) of this section) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

(F) An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

(3) Utilization of local and private experts

In developing and implementing a management program under this subsection, a State shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

(4) Development on watershed basis

A State shall, to the maximum extent practicable, develop and implement a management program under this subsection on a watershed-by-watershed basis within such State.

(c) Administrative provisions

(1) Cooperation requirement

Any report required by subsection (a) of this section and any management program and report required by subsection (b) of this section shall be developed in cooperation with local, substate regional, and interstate entities which are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 1288 of this title, or have worked jointly with the State on water quality management planning under section 1285(j) of this title, or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.
(2) Time period for submission of reports and management programs

Each report and management program shall be submitted to the Administrator during the 18-month period beginning on February 4, 1987.

(d) Approval or disapproval of reports and management programs

(1) Deadline

Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or management program under this section (other than subsections (h), (i), and (k) of this section), the Administrator shall either approve or disapprove such report or management program, as the case may be. The Administrator may approve a portion of a management program under this subsection. If the Administrator does not disapprove a report, management program, or portion of a management program in such 180-day period, such report, management program, or portion shall be deemed approved for purposes of this section.

(2) Procedure for disapproval

If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that--

(A) the proposed management program or any portion thereof does not meet the requirements of subsection (b)(2) of this section or is not likely to satisfy, in whole or in part, the goals and requirements of this chapter;

(B) adequate authority does not exist, or adequate resources are not available, to implement such program or portion;

(C) the schedule for implementing such program or portion is not sufficiently expeditious; or

(D) the practices and measures proposed in such program or portion are not adequate to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources and to improve the quality of navigable waters in the State;

the Administrator shall within 6 months of the receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional 3 months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

(3) Failure of State to submit report

If a Governor of a State does not submit the report required by subsection (a) of this section within the period specified by subsection (c)(2) of this section, the Administrator
shall, within 30 months after February 4, 1987, prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a) of this section. Upon completion of the requirement of the preceding sentence and after notice and opportunity for comment, the Administrator shall report to Congress on his actions pursuant to this section.

(e) Local management programs; technical assistance

If a State fails to submit a management program under subsection (b) of this section or the Administrator does not approve such a management program, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a management program which is described in subsection (b) of this section and can be approved pursuant to subsection (d) of this section. After development of such management program, such agency or organization shall submit such management program to the Administrator for approval. If the Administrator approves such management program, such agency or organization shall be eligible to receive financial assistance under subsection (h) of this section for implementation of such management program as if such agency or organization were a State for which a report submitted under subsection (a) of this section and a management program submitted under subsection (b) of this section were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (h) of this section.

(f) Technical assistance for States

Upon request of a State, the Administrator may provide technical assistance to such State in developing a management program approved under subsection (b) of this section for those portions of the navigable waters requested by such State.

(g) Interstate management conference

(1) Convening of conference; notification; purpose

If any portion of the navigable waters in any State which is implementing a management program approved under this section is not meeting applicable water quality standards or the goals and requirements of this chapter as a result, in whole or in part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute significant pollution resulting from nonpoint sources to such portion. If, on the basis of information available, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this chapter as a result, in whole or in part, of significant pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such
notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the water quality of such portion. Nothing in such agreement shall supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply to any pollution which is subject to the Colorado River Basin Salinity Control Act [43 U.S.C.A. § 1571 et seq.]. The requirement that the Administrator convene a management conference shall not be subject to the provisions of section 1365 of this title.

(2) State management program requirement

To the extent that the States reach agreement through such conference, the management programs of the States which are parties to such agreements and which contribute significant pollution to the navigable waters or portions thereof not meeting applicable water quality standards or goals and requirements of this chapter will be revised to reflect such agreement. Such management programs shall be consistent with Federal and State law.

(h) Grant program

(1) Grants for implementation of management programs

Upon application of a State for which a report submitted under subsection (a) of this section and a management program submitted under subsection (b) of this section is approved under this section, the Administrator shall make grants, subject to such terms and conditions as the Administrator considers appropriate, under this subsection to such State for the purpose of assisting the State in implementing such management program. Funds reserved pursuant to section 1285(j)(5) of this title may be used to develop and implement such management program.

(2) Applications

An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

(3) Federal share

The Federal share of the cost of each management program implemented with Federal assistance under this subsection in any fiscal year shall not exceed 60 percent of the cost incurred by the State in implementing such management program and shall be made on condition that the non-Federal share is provided from non-Federal sources.

(4) Limitation on grant amounts
Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

(5) Priority for effective mechanisms

For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to States which have implemented or are proposing to implement management programs which will--

(A) control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

(B) implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory programs where the Administrator deems appropriate;

(C) control interstate nonpoint source pollution problems; or

(D) carry out ground water quality protection activities which the Administrator determines are part of a comprehensive nonpoint source pollution control program, including research, planning, ground water assessments, demonstration programs, enforcement, technical assistance, education, and training to protect ground water quality from nonpoint sources of pollution.

(6) Availability for obligation

The funds granted to each State pursuant to this subsection in a fiscal year shall remain available for obligation by such State for the fiscal year for which appropriated. The amount of any such funds not obligated by the end of such fiscal year shall be available to the Administrator for granting to other States under this subsection in the next fiscal year.

(7) Limitation on use of funds

States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

(8) Satisfactory progress

No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2) of this section.

(9) Maintenance of effort
No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding February 4, 1987.

(10) Request for information

The Administrator may request such information, data, and reports as he considers necessary to make the determination of continuing eligibility for grants under this section.

(11) Reporting and other requirements

Each State shall report to the Administrator on an annual basis concerning (A) its progress in meeting the schedule of milestones submitted pursuant to subsection (b)(2)(C) of this section, and (B) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality for those navigable waters or watersheds within the State which were identified pursuant to subsection (a)(1)(A) of this section resulting from implementation of the management program.

(12) Limitation on administrative costs

For purposes of this subsection, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

(i) Grants for protecting groundwater quality

(1) Eligible applicants and activities

Upon application of a State for which a report submitted under subsection (a) of this section and a plan submitted under subsection (b) of this section is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting such State in carrying out groundwater quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.

(2) Applications
An application for a grant under this subsection shall be in such form and shall contain such information as the Administrator may require.

(3) Federal share; maximum amount

The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this subsection shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this subsection in any fiscal year shall not exceed $150,000.

(4) Report

The Administrator shall include in each report transmitted under subsection (m) of this section a report on the activities and programs implemented under this subsection during the preceding fiscal year.

(j) Authorization of appropriations

There is authorized to be appropriated to carry out subsections (h) and (i) of this section not to exceed $70,000,000 for fiscal year 1988, $100,000,000 per fiscal year for each of fiscal years 1989 and 1990, and $130,000,000 for fiscal year 1991; except that for each of such fiscal years not to exceed $7,500,000 may be made available to carry out subsection (i) of this section. Sums appropriated pursuant to this subsection shall remain available until expended.

(k) Consistency of other programs and projects with management programs

The Administrator shall transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (b)(2)(F) of this section for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program.

(l) Collection of information

The Administrator shall collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (1) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (2)
available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution.

(m) Reports of Administrator

(1) Annual reports

Not later than January 1, 1988, and each January 1 thereafter, the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

(2) Final report

Not later than January 1, 1990, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall--

(A) describe the management programs being implemented by the States by types and amount of affected navigable waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;

(B) describe the experiences of the States in adhering to schedules and implementing best management practices;

(C) describe the amount and purpose of grants awarded pursuant to subsections (h) and (i) of this section;

(D) identify, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the navigable waters;

(E) indicate what further actions need to be taken to attain and maintain in those navigable waters (i) applicable water quality standards, and (ii) the goals and requirements of this chapter;

(F) include recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources; and

(G) identify the activities and programs of departments, agencies, and instrumentalities of the United States which are inconsistent with the management programs submitted by the States and recommend modifications so that such activities and programs are consistent with and assist the States in implementation of such management programs.

(n) Set aside for administrative personnel

Not less than 5 percent of the funds appropriated pursuant to subsection (j) of this section for any fiscal year shall be available to the Administrator to maintain personnel levels at
the Environmental Protection Agency at levels which are adequate to carry out this section in such year.

**SUBCHAPTER IV: PERMITS AND LICENSES**

§ 1342. National pollutant discharge elimination system [CWA § 402]

(a) Permits for discharge of pollutants

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objective of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(i)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such
permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which--

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) control the disposal of pollutants into wells;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;
(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.

(c) Suspension of Federal program upon submission of State program; withdrawal of approval of State program; return of State program to Administrator

(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those discharges subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 1314(i)(2) of this title. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.
(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(i)(2) of this title.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(4) Limitations on partial permit program returns and withdrawals.

A State may return to the Administrator administration, and the Administrator may withdraw under paragraph (3) of this subsection approval, of--

(A) a State partial permit program approved under subsection (n)(3) of this section only if the entire permit program being administered by the State department or agency at the time is returned or withdrawn; and

(B) a State partial permit program approved under subsection (n)(4) of this section only if an entire phased component of the permit program being administered by the State at the time is returned or withdrawn.

(d) Notification of Administrator

(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

(4) In any case where, after December 27, 1977, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not
resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this chapter.

(e) Waiver of notification requirement

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

(f) Point source categories

The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

(g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants

Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(h) Violation of permit conditions; restriction or prohibition upon introduction of pollutant by source not previously utilizing treatment works

In the event any condition of a permit for discharges from a treatment works (as defined in section 1292 of this title) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Federal enforcement not limited

Nothing in this section shall be construed to limit the authority of the Administrator to
take action pursuant to section 1319 of this title.

(j) Public information

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

(k) Compliance with permits

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 1311, 1316, or 1342 of this title, or (2) section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on October 18, 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date which source is not subject to section 407 of this title, the discharge by such source shall not be a violation of this chapter if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

(l) Limitation on permit requirement

(1) Agricultural return flows

The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(2) Stormwater runoff from oil, gas, and mining operations

The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.
(m) Additional pretreatment of conventional pollutants not required

To the extent a treatment works (as defined in section 1292 of this title) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 1314(a)(4) of this title into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 1317(b)(1) of this title. Nothing in this subsection shall affect the Administrator's authority under sections 1317 and 1319 of this title, affect State and local authority under sections 1317(b)(4) and 1370 of this title, relieve such treatment works of its obligations to meet requirements established under this chapter, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) Partial permit program

(1) State submission

The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

(2) Minimum coverage

A partial permit program under this subsection shall cover, at a minimum, administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b) of this section.

(3) Approval of major category partial permit programs

The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if--

(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b) of this section.

(4) Approval of major component partial permit programs

The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) of this section if--

(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b) of this section; and
(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) of this section by a specified date not more than 5 years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.

(o) Anti-backsliding

(1) General prohibition

In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 1314(b) of this title subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of section 1311(b)(1)(C) or section 1313(d) or (e) of this title, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 1313(d)(4) of this title.

(2) Exceptions

A permit with respect to which paragraph (1) applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if--

(A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B) of this section;

(C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) the permittee has received a permit modification under section 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), 1311(n), or 1326(a) of this title; or

(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).
Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this chapter or for reasons otherwise unrelated to water quality.

(3) Limitations

In no event may a permit with respect to which paragraph (1) applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 1313 of this title applicable to such waters.

(p) Municipal and industrial stormwater discharges

(1) General rule

Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under this section) shall not require a permit under this section for discharges composed entirely of stormwater.

(2) Exceptions

Paragraph (1) shall not apply with respect to the following stormwater discharges:

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

(B) A discharge associated with industrial activity.

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

(E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) Permit requirements

(A) Industrial discharges
Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title.

(B) Municipal discharge

Permits for discharges from municipal storm sewers--

(i) may be issued on a system- or jurisdiction-wide basis;

(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

(4) Permit application requirements

(A) Industrial and large municipal discharges

Not later than 2 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after February 4, 1987. Not later than 4 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(B) Other municipal discharges

Not later than 4 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after February 4, 1987. Not later than 6 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(5) Studies

The Administrator, in consultation with the States, shall conduct a study for the purposes of--

(A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection;
(B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and

(C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.

Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of the study described in subparagraph (C).

(6) Regulations

Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

(q) Combined sewer overflows

(1) Requirement for permits, orders, and decrees

Each permit, order, or decree issued pursuant to this chapter after December 21, 2000 for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy signed by the Administrator on April 11, 1994 (in this subsection referred to as the “CSO control policy”).

(2) Water quality and designated use review guidance

Not later than July 31, 2001, and after providing notice and opportunity for public comment, the Administrator shall issue guidance to facilitate the conduct of water quality and designated use reviews for municipal combined sewer overflow receiving waters.

(3) Report

Not later than September 1, 2001, the Administrator shall transmit to Congress a report on the progress made by the Environmental Protection Agency, States, and municipalities in implementing and enforcing the CSO control policy.

(r) Discharges incidental to the normal operation of recreational vessels

No permit shall be required under this chapter by the Administrator (or a State, in the case of a permit program approved under subsection (b)) for the discharge of any
graywater, bilge water, cooling water, weather deck runoff, oil water separator effluent, or effluent from properly functioning marine engines, or any other discharge that is incidental to the normal operation of a vessel, if the discharge is from a recreational vessel.

§ 1344. Permits for dredged or fill material [CWA § 404]

(a) Discharge into navigable waters at specified disposal sites

The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.

(b) Specification for disposal sites

Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 1343(c) of this title, and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

(c) Denial or restriction of use of defined areas as disposal sites

The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

(d) “Secretary” defined

The term “Secretary” as used in this section means the Secretary of the Army, acting through the Chief of Engineers.

e) General permits on State, regional, or nationwide basis

(1) In carrying out his functions relating to the discharge of dredged or fill material under
this section, the Secretary may, after notice and opportunity for public hearing, issue
general permits on a State, regional, or nationwide basis for any category of activities
involving discharges of dredged or fill material if the Secretary determines that the
activities in such category are similar in nature, will cause only minimal adverse
environmental effects when performed separately, and will have only minimal
cumulative adverse effect on the environment. Any general permit issued under this
subsection shall (A) be based on the guidelines described in subsection (b)(1) of this
section, and (B) set forth the requirements and standards which shall apply to any activity
authorized by such general permit.

(2) No general permit issued under this subsection shall be for a period of more than five
years after the date of its issuance and such general permit may be revoked or modified
by the Secretary if, after opportunity for public hearing, the Secretary determines that the
activities authorized by such general permit have an adverse impact on the environment
or such activities are more appropriately authorized by individual permits.

(f) Non-prohibited discharge of dredged or fill material

(1) Except as provided in paragraph (2) of this subsection, the discharge of dredged or fill
material--

(A) from normal farming, silviculture, and ranching activities such as plowing, seeding,
cultivating, minor drainage, harvesting for the production of food, fiber, and forest
products, or upland soil and water conservation practices;

(B) for the purpose of maintenance, including emergency reconstruction of recently
damaged parts, of currently serviceable structures such as dikes, dams, levees, groins,
riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation
structures;

(C) for the purpose of construction or maintenance of farm or stock ponds or irrigation
ditches, or the maintenance of drainage ditches;

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

(E) for the purpose of construction or maintenance of farm roads or forest roads, or
temporary roads for moving mining equipment, where such roads are constructed and
maintained, in accordance with best management practices, to assure that flow and
circulation patterns and chemical and biological characteristics of the navigable waters
are not impaired, that the reach of the navigable waters is not reduced, and that any
adverse effect on the aquatic environment will be otherwise minimized;

(F) resulting from any activity with respect to which a State has an approved program
under section 1288(b)(4) of this title which meets the requirements of subparagraphs (B)
and (C) of such section,
is not prohibited by or otherwise subject to regulation under this section or section 1311(a) or 1342 of this title (except for effluent standards or prohibitions under section 1317 of this title).

(2) Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.

(g) State administration

(1) The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto) within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program.

(2) Not later than the tenth day after the date of the receipt of the program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall provide copies of such program and statement to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

(3) Not later than the ninetieth day after the date of the receipt by the Administrator of the program and statement submitted by any State, under paragraph (1) of this subsection, the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such program and statement to the Administrator in writing.

(h) Determination of State's authority to issue permits under State program; approval; notification; transfers to State program

(1) Not later than the one-hundred-twentieth day after the date of the receipt by the Administrator of a program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall determine, taking into account any comments submitted by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, pursuant to subsection (g) of this section,
whether such State has the following authority with respect to the issuance of permits pursuant to such program:

(A) To issue permits which--

(i) apply, and assure compliance with, any applicable requirements of this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, and sections 1317 and 1343 of this title;

(ii) are for fixed terms not exceeding five years; and

(iii) can be terminated or modified for cause including, but not limited to, the following:

(I) violation of any condition of the permit;

(II) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(III) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(B) To issue permits which apply, and assure compliance with, all applicable requirements of section 1318 of this title, or to inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title.

(C) To assure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application.

(D) To assure that the Administrator receives notice of each application (including a copy thereof) for a permit.

(E) To assure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing.

(F) To assure that no permit will be issued if, in the judgment of the Secretary, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby.

(G) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.

(H) To assure continued coordination with Federal and Federal-State water-related planning and review processes.
(2) If, with respect to a State program submitted under subsection (g)(1) of this section, the Administrator determines that such State--

(A) has the authority set forth in paragraph (1) of this subsection, the Administrator shall approve the program and so notify (i) such State and (ii) the Secretary, who upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsections (a) and (e) of this section for activities with respect to which a permit may be issued pursuant to such State program; or

(B) does not have the authority set forth in paragraph (1) of this subsection, the Administrator shall so notify such State, which notification shall also describe the revisions or modifications necessary so that such State may resubmit such program for a determination by the Administrator under this subsection.

(3) If the Administrator fails to make a determination with respect to any program submitted by a State under subsection (g)(1) of this section within one-hundred-twenty days after the date of the receipt of such program, such program shall be deemed approved pursuant to paragraph (2)(A) of this subsection and the Administrator shall so notify such State and the Secretary who, upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (e) of this section for activities with respect to which a permit may be issued by such State.

(4) After the Secretary receives notification from the Administrator under paragraph (2) or (3) of this subsection that a State permit program has been approved, the Secretary shall transfer any applications for permits pending before the Secretary for activities with respect to which a permit may be issued pursuant to such State program to such State for appropriate action.

(5) Upon notification from a State with a permit program approved under this subsection that such State intends to administer and enforce the terms and conditions of a general permit issued by the Secretary under subsection (e) of this section with respect to activities in such State to which such general permit applies, the Secretary shall suspend the administration and enforcement of such general permit with respect to such activities.

(i) Withdrawal of approval

Whenever the Administrator determines after public hearing that a State is not administering a program approved under subsection (h)(2)(A) of this section, in accordance with this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, the Administrator shall so notify the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days after the date of the receipt of such notification, the Administrator shall (1) withdraw approval of such program until the Administrator determines such corrective action has been taken, and (2) notify the Secretary that the Secretary shall resume the program for the issuance of permits under subsections (a) and (e) of this section for activities with respect to which the State was issuing permits and that such authority of
the Secretary shall continue in effect until such time as the Administrator makes the
determination described in clause (1) of this subsection and such State again has an
approved program.

(j) Copies of applications for State permits and proposed general permits to be
transmitted to Administrator

Each State which is administering a permit program pursuant to this section shall transmit
to the Administrator (1) a copy of each permit application received by such State and
provide notice to the Administrator of every action related to the consideration of such
permit application, including each permit proposed to be issued by such State, and (2) a
copy of each proposed general permit which such State intends to issue. Not later than the
tenth day after the date of the receipt of such permit application or such proposed general
permit, the Administrator shall provide copies of such permit application or such
proposed general permit to the Secretary and the Secretary of the Interior, acting through
the Director of the United States Fish and Wildlife Service. If the Administrator intends
to provide written comments to such State with respect to such permit application or such
proposed general permit, he shall so notify such State not later than the thirtieth day after
the date of the receipt of such application or such proposed general permit and provide
such written comments to such State, after consideration of any comments made in
writing with respect to such application or such proposed general permit by the Secretary
and the Secretary of the Interior, acting through the Director of the United States Fish and
Wildlife Service, not later than the ninetieth day after the date of such receipt. If such
State is so notified by the Administrator, it shall not issue the proposed permit until after
the receipt of such comments from the Administrator, or after such ninetieth day,
whichever first occurs. Such State shall not issue such proposed permit after such
ninetieth day if it has received such written comments in which the Administrator objects
(A) to the issuance of such proposed permit and such proposed permit is one that has
been submitted to the Administrator pursuant to subsection (h)(1)(E) of this section, or
(B) to the issuance of such proposed permit as being outside the requirements of this
section, including, but not limited to, the guidelines developed under subsection (b)(1) of
this section unless it modifies such proposed permit in accordance with such comments.
Whenever the Administrator objects to the issuance of a permit under the preceding
sentence such written objection shall contain a statement of the reasons for such objection
and the conditions which such permit would include if it were issued by the
Administrator. In any case where the Administrator objects to the issuance of a permit, on
request of the State, a public hearing shall be held by the Administrator on such
objection. If the State does not resubmit such permit revised to meet such objection
within 30 days after completion of the hearing or, if no hearing is requested within 90
days after the date of such objection, the Secretary may issue the permit pursuant to
subsection (a) or (e) of this section, as the case may be, for such source in accordance
with the guidelines and requirements of this chapter.

(k) Waiver

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314
of this title, the Administrator is authorized to waive the requirements of subsection (j) of this section at the time of the approval of a program pursuant to subsection (h)(2)(A) of this section for any category (including any class, type, or size within such category) of discharge within the State submitting such program.

(l) Categories of discharges not subject to requirements

The Administrator shall promulgate regulations establishing categories of discharges which he determines shall not be subject to the requirements of subsection (j) of this section in any State with a program approved pursuant to subsection (h)(2)(A) of this section. The Administrator may distinguish among classes, types, and sizes within any category of discharges.

(m) Comments on permit applications or proposed general permits by Secretary of the Interior acting through Director of United States Fish and Wildlife Service

Not later than the ninetieth day after the date on which the Secretary notifies the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service that (1) an application for a permit under subsection (a) of this section has been received by the Secretary, or (2) the Secretary proposes to issue a general permit under subsection (e) of this section, the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such application or such proposed general permit in writing to the Secretary.

(n) Enforcement authority not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(o) Public availability of permits and permit applications

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or portion thereof, shall further be available on request for the purpose of reproduction.

(p) Compliance

Compliance with a permit issued pursuant to this section, including any activity carried out pursuant to a general permit issued under this section, shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1317, and 1343 of this title.

(q) Minimization of duplication, needless paperwork, and delays in issuance; agreements

Not later than the one-hundred-eightieth day after December 27, 1977, the Secretary shall enter into agreements with the Administrator, the Secretaries of the Departments of
Agriculture, Commerce, Interior, and Transportation, and the heads of other appropriate Federal agencies to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section. Such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section will be made not later than the ninetieth day after the date the notice for such application is published under subsection (a) of this section.

(r) Federal projects specifically authorized by Congress

The discharge of dredged or fill material as part of the construction of a Federal project specifically authorized by Congress, whether prior to or on or after December 27, 1977, is not prohibited by or otherwise subject to regulation under this section, or a State program approved under this section, or section 1311(a) or 1342 of this title (except for effluent standards or prohibitions under section 1317 of this title), if information on the effects of such discharge, including consideration of the guidelines developed under subsection (b)(1) of this section, is included in an environmental impact statement for such project pursuant to the National Environmental Policy Act of 1969 [42 U.S.C.A. § 4321 et seq.] and such environmental impact statement has been submitted to Congress before the actual discharge of dredged or fill material in connection with the construction of such project and prior to either authorization of such project or an appropriation of funds for such construction.

(s) Violation of permits

(1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any condition or limitation set forth in a permit issued by the Secretary under this section, the Secretary shall issue an order requiring such person to comply with such condition or limitation, or the Secretary shall bring a civil action in accordance with paragraph (3) of this subsection.

(2) A copy of any order issued under this subsection shall be sent immediately by the Secretary to the State in which the violation occurs and other affected States. Any order issued under this subsection shall be by personal service and shall state with reasonable specificity the nature of the violation, specify a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.

(3) The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction for any violation for which he is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the
commencement of such action shall be given immediately to the appropriate State.

(4) Any person who violates any condition or limitation in a permit issued by the Secretary under this section, and any person who violates any order issued by the Secretary under paragraph (1) of this subsection, shall be subject to a civil penalty not to exceed $25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.

(t) Navigable waters within State jurisdiction

Nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such State, including any activity of any Federal agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements. This section shall not be construed as affecting or impairing the authority of the Secretary to maintain navigation.

§ 1345. Disposal or use of sewage sludge [CWA § 405]

(a) Permit

Notwithstanding any other provision of this chapter or of any other law, in any case where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 1292 of this title (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 1342 of this title.

(b) Issuance of permit; regulations

The Administrator shall issue regulations governing the issuance of permits for the disposal of sewage sludge subject to subsection (a) of this section and section 1342 of this title. Such regulations shall require the application to such disposal of each criterion, factor, procedure, and requirement applicable to a permit issued under section 1342 of this title.

(c) State permit program

Each State desiring to administer its own permit program for disposal of sewage sludge subject to subsection (a) of this section within its jurisdiction may do so in accordance with section 1342 of this title.
(d) Regulations

(1) Regulations

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after December 27, 1977, and from time to time thereafter, regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes. Such regulations shall--

(A) identify uses for sludge, including disposal;

(B) specify factors to be taken into account in determining the measures and practices applicable to each such use or disposal (including publication of information on costs);

(C) identify concentrations of pollutants which interfere with each such use or disposal.

The Administrator is authorized to revise any regulation issued under this subsection.

(2) Identification and regulation of toxic pollutants

(A) On basis of available information

(i) Proposed regulations

Not later than November 30, 1986, the Administrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A).

(ii) Final regulations

Not later than August 31, 1987, and after opportunity for public hearing, the Administrator shall promulgate the regulations required by subparagraph (A)(i).

(B) Others

(i) Proposed regulations

Not later than July 31, 1987, the Administrator shall identify those toxic pollutants not identified under subparagraph (A)(i) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each pollutant for each such use identified under paragraph (1)(A).
(ii) Final regulations

Not later than June 15, 1988, the Administrator shall promulgate the regulations required by subparagraph (B)(i).

(C) Review

From time to time, but not less often than every 2 years, the Administrator shall review the regulations promulgated under this paragraph for the purpose of identifying additional toxic pollutants and promulgating regulations for such pollutants consistent with the requirements of this paragraph.

(D) Minimum standards; compliance date

The management practices and numerical criteria established under subparagraphs (A), (B), and (C) shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant. Such regulations shall require compliance as expeditiously as practicable but in no case later than 12 months after their publication, unless such regulations require the construction of new pollution control facilities, in which case the regulations shall require compliance as expeditiously as practicable but in no case later than two years from the date of their publication.

(3) Alternative standards

For purposes of this subsection, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under paragraph (2), the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the Administrator's judgment is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(4) Conditions on permits

Prior to the promulgation of the regulations required by paragraph (2), the Administrator shall impose conditions in permits issued to publicly owned treatment works under section 1342 of this title or take such other measures as the Administrator deems appropriate to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge.

(5) Limitation on statutory construction

Nothing in this section is intended to waive more stringent requirements established by this chapter or any other law.
(e) Manner of sludge disposal

The determination of the manner of disposal or use of sludge is a local determination, except that it shall be unlawful for any person to dispose of sludge from a publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.

(f) Implementation of regulations

(1) Through section 1342 permits

Any permit issued under section 1342 of this title to a publicly owned treatment works or any other treatment works treating domestic sewage shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section, unless such requirements have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act [42 U.S.C.A. § 6921 et seq.], part C of the Safe Drinking Water Act [42 U.S.C.A. § 300h et seq.], the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C.A. § 1401 et seq.], or the Clean Air Act [42 U.S.C.A. § 7401 et seq.], or under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section. Not later than December 15, 1986, the Administrator shall promulgate procedures for approval of State programs pursuant to this paragraph.

(2) Through other permits

In the case of a treatment works described in paragraph (1) that is not subject to section 1342 of this title and to which none of the other above listed permit programs nor approved State permit authority apply, the Administrator may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section. The Administrator shall include in the permit appropriate requirements to assure compliance with the regulations established pursuant to subsection (d) of this section. The Administrator shall establish procedures for issuing permits pursuant to this paragraph.

(g) Studies and projects

(1) Grant program; information gathering

The Administrator is authorized to conduct or initiate scientific studies, demonstration projects, and public information and education projects which are designed to promote the safe and beneficial management or use of sewage sludge for such purposes as aiding the restoration of abandoned mine sites, conditioning soil for parks and recreation areas, agricultural and horticultural uses, and other beneficial purposes. For the purposes of carrying out this subsection, the Administrator may make grants to State water pollution control agencies, other public or nonprofit agencies, institutions, organizations, and
individuals. In cooperation with other Federal departments and agencies, other public and private agencies, institutions, and organizations, the Administrator is authorized to collect and disseminate information pertaining to the safe and beneficial use of sewage sludge.

(2) Authorization of appropriations

For the purposes of carrying out the scientific studies, demonstration projects, and public information and education projects authorized in this section, there is authorized to be appropriated for fiscal years beginning after September 30, 1986, not to exceed $5,000,000.

SUBCHAPTER V: GENERAL PROVISIONS

§ 1362. Definitions [CWA § 502]

Except as otherwise specifically provided, when used in this chapter:

(1) The term “State water pollution control agency” means the State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

(2) The term “interstate agency” means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(3) The term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(4) The term “municipality” means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 1288 of this title.

(5) The term “person” means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

(6) The term “pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) “sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces” within the meaning of section 1322 of this title; or (B) water, gas, or other
material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(7) The term “Navigable waters” means the waters of the United States, including the territorial seas.

(8) The term “Territorial seas” means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

(9) The term “Contiguous zone” means the entire zone established or to be established by the United States under Article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(10) The term “Ocean” means any portion of the high seas beyond the contiguous zone.

(11) The term “Effluent limitation” means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

(12) The term “Discharge of a pollutant” and the term “Discharge of pollutants” each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

(13) The term “Toxic pollutant” means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(14) The term “Point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

(15) The term “Biological monitoring” shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the
discharge of pollutants (A) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (B) at appropriate frequencies and locations.

(16) The term “discharge” when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

(17) The term “schedule of compliance” means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

(18) The term “industrial user” means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category of “Division D--Manufacturing” and such other classes of significant waste producers as, by regulation, the Administrator deems appropriate.

(19) The term “pollution” means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(20) The term “medical waste” means isolation wastes; infectious agents; human blood and blood products; pathological wastes; sharps; body parts; contaminated bedding; surgical wastes and potentially contaminated laboratory wastes; dialysis wastes; and such additional medical items as the Administrator shall prescribe by regulation.

(21) Coastal recreation waters

(A) In general

The term “coastal recreation waters” means--

(i) the Great Lakes; and

(ii) marine coastal waters (including coastal estuaries) that are designated under section 1313(c) of this title by a State for use for swimming, bathing, surfing, or similar water contact activities.

(B) Exclusions

The term “coastal recreation waters” does not include--

(i) inland waters; or

(ii) waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea.

(22) Floatable material
(A) In general

The term “floatable material” means any foreign matter that may float or remain suspended in the water column.

(B) Inclusions

The term “floatable material” includes--

(i) plastic;

(ii) aluminum cans;

(iii) wood products;

(iv) bottles; and

(v) paper products.

(23) Pathogen indicator

The term “pathogen indicator” means a substance that indicates the potential for human infectious disease.

(24) Oil and gas exploration and production

The term “oil and gas exploration, production, processing, or treatment operations or transmission facilities” means all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities.

(25) Recreational vessel

(A) In general

The term “recreational vessel” means any vessel that is--

(i) manufactured or used primarily for pleasure; or

(ii) leased, rented, or chartered to a person for the pleasure of that person.

(B) Exclusion

The term “recreational vessel” does not include a vessel that is subject to Coast Guard inspection and that--

(i) is engaged in commercial use; or
(ii) carries paying passengers.

§ 1365. Citizen suits

(a) Authorization; jurisdiction

Except as provided in subsection (b) of this section and section 1319(g)(6) of this title, any citizen may commence a civil action on his own behalf--

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 1319(d) of this title.

(b) Notice

No action may be commenced--

(1) under subsection (a)(1) of this section--

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any citizen may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator;

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of sections 1316 and 1317(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.
(c) Venue; intervention by Administrator; United States interests protected

(1) Any action respecting a violation by a discharge source of an effluent standard or limitation or an order respecting such standard or limitation may be brought under this section only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(3) Protection of interests of United States

Whenever any action is brought under this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. No consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

(d) Litigation costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Statutory or common law rights not restricted

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(f) Effluent standard or limitation

For purposes of this section, the term “effluent standard or limitation under this chapter” means (1) effective July 1, 1973, an unlawful act under subsection (a) of section 1311 of this title; (2) an effluent limitation or other limitation under section 1311 or 1312 of this title; (3) standard of performance under section 1316 of this title; (4) prohibition, effluent standard or pretreatment standards under section 1317 of this title; (5) certification under section 1341 of this title; (6) a permit or condition thereof issued under section 1342 of this title, which is in effect under this chapter (including a requirement applicable by reason of section 1323 of this title); or (7) a regulation under section 1345(d) of this title,

(g) “Citizen” defined
For the purposes of this section the term “citizen” means a person or persons having an interest which is or may be adversely affected.

(h) Civil action by State Governors

A Governor of a State may commence a civil action under subsection (a) of this section, without regard to the limitations of subsection (b) of this section, against the Administrator where there is alleged a failure of the Administrator to enforce an effluent standard or limitation under this chapter the violation of which is occurring in another State and is causing an adverse effect on the public health or welfare in his State, or is causing a violation of any water quality requirement in his State.

§ 1369. Administrative procedure and judicial review [CWA § 509]

(a) Subpenas

(1) For purposes of obtaining information under section 1315 of this title, or carrying out section 1367(e) of this title, the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for effluent data, upon a showing satisfactory to the Administrator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(2) The district courts of the United States are authorized, upon application by the Administrator, to issue subpenas for attendance and testimony of witnesses and the production of relevant papers, books, and documents, for purposes of obtaining information under sections 1314(b) and (c) of this title. Any papers, books, documents, or other information or part thereof, obtained by reason of such a subpena shall be subject to the same requirements as are provided in paragraph (1) of this subsection.

(b) Review of Administrator's actions; selection of court; fees
(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 1316 of this title, (B) in making any determination pursuant to section 1316(b)(1)(C) of this title, (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 1317 of this title, (D) in making any determination as to a State permit program submitted under section 1342(b) of this title, (E) in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, 1316, or 1345 of this title, (F) in issuing or denying any permit under section 1342 of this title, and (G) in promulgating any individual control strategy under section 1314(l) of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts business which is directly affected by such action upon application by such person. Any such application shall be made within 120 days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such 120th day.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

(3) Award of fees

In any judicial proceeding under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever it determines that such award is appropriate.

(c) Additional evidence

In any judicial proceeding brought under subsection (b) of this section in which review is sought of a determination required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.