

## Previous Section

### Sec. 401 [33 USC 1341] Certification

#### FWPC Sec. 401(a)

"(a) "(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301 , 302 , 303 , 306 , and 307 of this Act . In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 301(b) and 302 , and there is not an applicable standard under sections 306 and 307 , the State shall so certify, except that any such certification shall not be deemed to satisfy section 511(c) of this Act. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

#### FWPC Sec. 401(a)(2)

"(2) Upon receipt of such application and certification the licensing or permitting agency shall immediately notify the Administrator of such application and certification. Whenever such a discharge may affect, as determined by the Administrator, the quality of the waters of any other State, the Administrator within thirty days of the date of notice of application for such Federal license or permit shall so notify such other State, the licensing or permitting agency, and the applicant. If, within sixty days after receipt of such notification, such other State determines that such discharge will affect the quality of its waters so as to violate any water quality requirement in such State, and within such sixty-day period notifies the Administrator and the licensing or permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. The Administrator shall at such hearing submit his evaluation and recommendations with respect to any such objection to the licensing or permitting agency. Such agency, based upon the recommendations of such State, the Administrator, and upon any additional evidence, if any, presented to the agency at the hearing, shall condition such license or permit in such manner as may be necessary to insure compliance with applicable water quality requirements. If the imposition of conditions cannot insure such compliance such agency shall not issue such license or permit.

#### FWPC Sec. 401(a)(3)

"(3) The certification obtained pursuant to paragraph (1) of this subsection with respect to the construction of any facility shall fulfill the requirements of this subsection with respect to certification in connection with any other Federal license or permit required for the operation of such facility unless, after notice to the certifying State, agency, or Administrator, as the case may be, which shall be given by the Federal agency to whom application is made for such operating license or permit, the State, or if appropriate, the interstate agency or the Administrator, notifies such agency within sixty days after receipt of such notice that there is no longer reasonable assurance that there will be compliance with the applicable provisions of sections 301 , 302 , 303 , 306 , and 307 of this Act because of changes since the construction license or permit certification was issued in "(A) the construction or operation of the facility, "(B) the characteristics of the waters into which such discharge is made, "(C) the water quality criteria applicable to such waters or "(D) applicable effluent limitations or other requirements. This paragraph shall be inapplicable in any case where the applicant for such operating license or permit has failed to provide the certifying State, or, if appropriate, the interstate agency or the Administrator, with notice of any proposed changes in the construction or operation of the facility with respect to which a construction license or permit has been granted, which changes may result in violation of section 301 , 302 , 303 , 306 , or 307 of this Act .

FWPC Sec. 401(a)(4)

"(4) Prior to the initial operation of any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters and with respect to which a certification has been obtained pursuant to paragraph (1) of this subsection , which facility or activity is not subject to a Federal operating license or permit, the licensee or permittee shall provide an opportunity for such certifying State, or, if appropriate, the interstate agency or the Administrator to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other limitations or other applicable water quality requirements will not be violated. Upon notification by the certifying State, or if appropriate, the interstate agency or the Administrator that the operation of any such federally licensed or permitted facility or activity will violate applicable effluent limitations or other limitations or other water quality requirements such Federal agency may, after public hearing, suspend such license or permit. If such license or permit is suspended, it shall remain suspended until notification is received from the certifying State, agency, or Administrator, as the case may be, that there is reasonable assurance that such facility or activity will not violate the applicable provisions of section 301 , 302 , 303 , 306 , or 307 of this Act .

FWPC Sec. 401(a)(5)

"(5) Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under this Act that such facility or activity has been operated in violation of the applicable provisions of section 301 , 302 , 303 , 306 , or 307 of this Act .

FWPC Sec. 401(a)(6)

"(6) Except with respect to a permit issued under section 402 of this Act , in any case where actual construction of a facility has been lawfully commenced prior to April 3, 1970, no certification shall be required under this subsection for a license or permit issued after April 3, 1970, to operate such facility, except that any such license or permit issued without certification shall terminate April 3,

1973, unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permit a certification and otherwise meets the requirements of this section.

FWPC Sec. 401(b)

"(b) Nothing in this section shall be construed to limit the authority of any department or agency pursuant to any other provision of law to require compliance with any applicable water quality requirements. The Administrator shall, upon the request of any Federal department or agency, or State or interstate agency, or applicant, provide, for the purpose of this section, any relevant information on applicable effluent limitations, or other limitations, standards, regulations or requirements, or water quality criteria, and shall, when requested by any such department or agency or State or interstate agency, or applicant, comment on any methods to comply with such limitations, standards, regulations, requirements, or criteria.

FWPC Sec. 401(c)

"(c) In order to implement the provisions of this section, the Secretary of the Army, acting through the Chief of Engineers, is authorized, if he deems it to be in the public interest, to permit the use of spoil disposal areas under his jurisdiction by Federal licensees or permittees, and to make an appropriate charge for such use. Moneys received from such licensees or permittees shall be deposited in the Treasury as miscellaneous receipts.

FWPC Sec. 401(d)

"(d) Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 301 or 302 of this Act , standard of performance under section 306 of this Act , or prohibition, effluent standard, or pretreatment standard under section 307 of this Act , and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section.

**Sec. 402 [33 USC 1342] National Pollutant Discharge Elimination System**

FWPC Sec. 402(a)

"(a) "(1) Except as provided in sections 318 and 404 of this Act , the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a) , upon condition that such discharge will meet either "(A) all applicable requirements under sections 301 , 302 , 306 , 307 , 308 and 403 of this Act , 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 Act.

[402(a)(1)(A) and (B) designated by PL 100-4]

FWPC Sec. 402(a)(2)

"(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.

FWPC Sec. 402(a)(3)

"(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.

FWPC Sec. 402(a)(4)

"(4) All permits for discharges into the navigable waters issued pursuant to section 13 of the Act of March 3, 1899, shall be deemed to be permits issued under this title, and permits issued under this title shall be deemed to be permits issued under section 13 of the Act of March 3, 1899, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this Act.

FWPC Sec. 402(a)(5)

"(5) No permit for a discharge into the navigable waters shall be issued under section 13 of the Act of March 3, 1899, after the date of enactment of this title. Each application for a permit under section 13 of the Act of March 3, 1899, pending on the date of enactment of this Act 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 Act, 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 the date of enactment of this Act and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 304(i)(2) of this Act, 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 Act. No such permit shall issue if the Administrator objects to such issuance.

FWPC Sec. 402(b)

"(b) At any time after the promulgation of the guidelines required by subsection (i)(2) of section 304 of this Act, 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:

FWPC Sec. 402(b)(1)

"(1) To issue permits which

FWPC Sec. 402(b)(1)(A)

"(A) apply, and insure compliance with, any applicable requirements of sections 301 , 302 , 306 , 307 , and 403 ;

FWPC Sec. 402(b)(1)(B)

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

FWPC Sec. 402(b)(1)(C)

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

FWPC Sec. 402(b)(1)(C)(i)

"(i) violation of any condition of the permit;

FWPC Sec. 402(b)(1)(C)(ii)

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

FWPC Sec. 402(b)(1)(C)(iii)

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

FWPC Sec. 402(b)(1)(D)

"(D) control the disposal of pollutants into wells;

FWPC Sec. 402(b)(2)

"(2) "(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 308 of this Act , or

FWPC Sec. 402(b)(2)(B)

"(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of this Act ;

FWPC Sec. 402(b)(3)

"(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;

FWPC Sec. 402(b)(4)

"(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

FWPC Sec. 402(b)(5)

"(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;

FWPC Sec. 402(b)(6)

"(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;

FWPC Sec. 402(b)(7)

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

FWPC Sec. 402(b)(8)

"(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 307(b) of this Act 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 306 if such source were discharging pollutants, "(B) new introductions of pollutants into such works from a source which would be subject to section 301 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

FWPC Sec. 402(b)(9)

"(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 204(b), 307 , and 308 .

FWPC Sec. 402(c)

"(c) "(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 304(i)(2) of this Act. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

[402(c)(1) amended by PL 100-4]

FWPC Sec. 402(c)(2)

"(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 304(i)(2) of this Act.

FWPC Sec. 402(c)(3)

"(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.

FWPC Sec. 402(c)(4)

"(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

FWPC Sec. 402(c)(4)(A)

"(A) a State partial permit program approved under subsection (n)(4) only if the entire permit program being administered by the State department or agency at the time is returned or withdrawn; and

FWPC Sec. 402(c)(4)(B)

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

[402(c)(4) added by PL 100-4]

FWPC Sec. 402(d)

"(d) "(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.

FWPC Sec. 402(d)(2)

"(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 Act. 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.

FWPC Sec. 402(d)(3)

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

FWPC Sec. 402(d)(4)

"(4) In any case where, after the date of enactment of this paragraph, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, or 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 Act.

FWPC Sec. 402(e)

"(e) In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 304 of this Act, the Administrator 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.

FWPC Sec. 402(f)

"(f) 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.

FWPC Sec. 402(g)

"(g) 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.

FWPC Sec. 402(h)

"(h) In the event any condition of a permit for discharges from a treatment works (as defined in section 212 of this Act ) 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 309(a) of this Act 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.

FWPC Sec. 402(i)

"(i) Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 309 of this Act .

FWPC Sec. 402(j)

"(j) 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.

FWPC Sec. 402(k)

"(k) Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 309 and 505 , with sections 301 , 302 , 306 , 307 , and 403 , except any standard imposed under section 307 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 301 , 306 , and 402, of this Act, or "(1) section 13 of the Act of March 3, 1899, 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date of enactment which source is not subject to section 13 of the Act of March 3, 1899, the discharge by such source shall not be a violation of this Act if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

FWPC Sec. 402(l)

"(l) Limitation on Permit Requirement.

FWPC Sec. 402(l)(1)

"(1) Agricultural Return Flows. The Administrator shall not require a permit under this section, for discharge composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

[402(l)(1) designated by PL 100-4]

FWPC Sec. 402(l)(2)

"(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.

[402(l)(2) added by PL 100-4]

FWPC Sec. 402(m)

"(m) Additional Pretreatment of Conventional Pollutants Not Required. To the extent a treatment works (as defined in section 212 of this Act ) 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 304(a)(4) of this Act into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act , affect State and local authority under sections 307(b)(4) and 510 of this Act , relieve such treatment works of its obligations to meet requirements established under this Act, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

[402(m) added by PL 100-4]

FWPC Sec. 402(n)

"(n) Partial Permit Program.

FWPC Sec. 402(n)(1)

"(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.

FWPC Sec. 402(n)(2)

"(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).

FWPC Sec. 402(n)(3)

"(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

FWPC Sec. 402(n)(3)(A)

"(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

FWPC Sec. 402(n)(3)(B)

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

FWPC Sec. 402(n)(4)

"(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) if

FWPC Sec. 402(n)(4)(A)

"(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b); and

FWPC Sec. 402(n)(4)(B)

"(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) 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.

[402(n) added by PL 100-4]

FWPC Sec. 402(o)

"(o) Anti-Backsliding.

FWPC Sec. 402(o)(1)

"(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 304(b) 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 301(b)(1)(C) or section 303 (d) or (e), 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 303(d)(4).

FWPC Sec. 402(o)(2)

"(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

FWPC Sec. 402(o)(2)(A)

"(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;

FWPC Sec. 402(o)(2)(B)

"(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

FWPC Sec. 402(o)(2)(B)(ii)

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

FWPC Sec. 402(o)(2)(C)

"(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;

FWPC Sec. 402(o)(2)(D)

"(D) the permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

FWPC Sec. 402(o)(2)(E)

"(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 Act or for reasons otherwise unrelated to water quality.

FWPC Sec. 402(o)(3)

"(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 303 applicable to such waters.

[402(o) added by PL 100-4]

FWPC Sec. 402(p)

"(p) Municipal and Industrial Stormwater Discharges.

FWPC Sec. 402(p)(1)

"(1) General Rule. Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under section 402 of this Act ) shall not require a permit under this section for discharges composed entirely of stormwater.

[402(p)(1) amended by PL 102-580]

FWPC Sec. 402(p)(2)

"(2) Exceptions. Paragraph (1) shall not apply with respect to the following stormwater discharges:

FWPC Sec. 402(p)(2)(A)

"(A) A discharge with respect to which a permit has been issued under this section before the date of the enactment of this subsection.

FWPC Sec. 402(p)(2)(B)

"(B) A discharge associated with industrial activity.

FWPC Sec. 402(p)(2)(C)

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

FWPC Sec. 402(p)(2)(D)

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

FWPC Sec. 402(p)(2)(E)

"(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.

FWPC Sec. 402(p)(3)

"(3) Permit Requirements.

FWPC Sec. 402(p)(3)(A)

"(A) Industrial Discharges. Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 301 .

FWPC Sec. 402(p)(3)(B)

"(B) Municipal Discharge. Permits for discharges from municipal storm sewers

FWPC Sec. 402(p)(3)(B)(i)

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

FWPC Sec. 402(p)(3)(B)(ii)

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

FWPC Sec. 402(p)(3)(B)(iii)

"(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.

FWPC Sec. 402(p)(4)

"(4) Permit Application Requirements.

FWPC Sec. 402(p)(4)(A)

"(A) Industrial and Large Municipal Discharges. Not later than 2 years after the date of the enactment of this subsection, 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 such date of enactment. Not later than 4 years after such date of enactment, 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.

FWPC Sec. 402(p)(4)(B)

"(B) Other Municipal Discharges. Not later than 4 years after the date of the enactment of this subsection, 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 such date of enactment. Not later than 6 years after such date of enactment, 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.

FWPC Sec. 402(p)(5)

"(5) Studies. The Administrator, in consultation with the States, shall conduct a study for the purposes of

FWPC Sec. 402(p)(5)(A)

"(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;

FWPC Sec. 402(p)(5)(B)

"(B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and

FWPC Sec. 402(p)(5)(C)

"(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).

[402(p)(6) amended by PL 102-580]

FWPC Sec. 402(p)(6)

"(6) Regulations. Not later than October 1, 1994, 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.

[402(p) added by PL 100-4]

### **Sec. 403 [33 USC 1343] Ocean Discharge Criteria**

FWPC Sec. 403(a)

"(a) No permit under section 402 of this Act for a discharge into the territorial sea, the waters of the contiguous zone, or the oceans shall be issued, after promulgation of guidelines established under subsection (c) of this section, except in compliance with such guidelines. Prior to the promulgation of such guidelines, a permit may be issued under such section 402 if the Administrator determines it to be in the public interest.

FWPC Sec. 403(b)

"(b) The requirements of subsection (d) of section 402 of this Act may not be waived in the case of permits for discharges into the territorial sea.

FWPC Sec. 403(c)

"(c) "(1) The Administrator shall, within one hundred and eighty days after enactment of this Act (and from time to time thereafter), promulgate guidelines for determining the degradation of the waters of the territorial seas, the contiguous zone, and the oceans, which shall include:

FWPC Sec. 403(c)(1)(A)

"(A) the effect of disposal of pollutants on human health or welfare, including but not limited to plankton, fish, shellfish, wildlife, shorelines, and beaches;

FWPC Sec. 403(c)(1)(B)

"(B) the effect of disposal of pollutants on marine life including the transfer, concentration, and dispersal of pollutants or their byproducts through biological, physical, and chemical processes; changes in marine ecosystem diversity, productivity, and stability; and species and community population changes;

FWPC Sec. 403(c)(1)(C)

"(C) the effect of disposal, of pollutants on esthetic, recreation, and economic values;

FWPC Sec. 403(c)(1)(D)

"(D) the persistence and permanence of the effects of disposal of pollutants;

FWPC Sec. 403(c)(1)(E)

"(E) the effect of the disposal at varying rates, of particular volumes and concentrations of pollutants;

FWPC Sec. 403(c)(1)(F)

"(F) other possible locations and methods of disposal or recycling of pollutants including land-based alternatives; and

FWPC Sec. 403(c)(1)(G)

"(G) the effect on alternate uses of the oceans, such as mineral exploitation and scientific study.

FWPC Sec. 403(c)(2)

"(2) In any event where insufficient information exists on any proposed discharge to make a reasonable judgment on any of the guidelines established pursuant to this subsection no permit shall be issued under section 402 of this Act .

#### **Sec. 404 [33 USC 1344] Permits for Dredged or Fill Material**

FWPC Sec. 404(a)

"(a) 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.

FWPC Sec. 404(b)

"(b) 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 zones, and the ocean under section 403(c), 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.

FWPC Sec. 404(c)

"(c) 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.

FWPC Sec. 404(d)

"(d) The term "Secretary" as used in this section means the Secretary of the Army, acting through the Chief of Engineers.

FWPC Sec. 404(e)

"(e) "(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.

FWPC Sec. 404(e)(2)

"(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.

FWPC Sec. 404(f)

"(f) "(1) Except as provided in paragraph (2) of this subsection, the discharge of dredge or fill material

FWPC Sec. 404(f)(1)(A)

"(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;

FWPC Sec. 404(f)(1)(B)

"(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;

FWPC Sec. 404(f)(1)(C)

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

FWPC Sec. 404(f)(1)(D)

"(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;

FWPC Sec. 404(f)(1)(E)

"(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;

FWPC Sec. 404(f)(1)(F)

"(F) resulting from any activity with respect to which a State has an approved program under section 208(b)(4) 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 301(a) or 402 of this Act (except for effluent standards or prohibitions under section 307 ).

FWPC Sec. 404(f)(2)

"(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.

FWPC Sec. 404(g)

"(g) "(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.

FWPC Sec. 404(g)(2)

"(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.

FWPC Sec. 404(g)(3)

"(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.

FWPC Sec. 404(h)

"(h) "(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:

FWPC Sec. 404(h)(1)(A)

"(A) To issue permits which

FWPC Sec. 404(h)(1)(A)(i)

"(i) apply and assure compliance with, any applicable requirements of this section, including, but not limited to, the guidelines established under section (b)(1) of this section, and sections 307 and 403 of this Act ;

FWPC Sec. 404(h)(1)(A)(ii)

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

FWPC Sec. 404(h)(1)(A)(iii)

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

FWPC Sec. 404(h)(1)(A)(iii)(I)

"(I) violation of any condition of the permit;

FWPC Sec. 404(h)(1)(A)(iii)(II)

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

FWPC Sec. 404(h)(1)(A)(iii)(III)

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

FWPC Sec. 404(h)(1)(B)

"(B) To issue permits which apply, and assure compliance with, all applicable requirements of section 308 of this Act , or to inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of this Act .

FWPC Sec. 404(h)(1)(C)

"(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.

FWPC Sec. 404(h)(1)(D)

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

FWPC Sec. 404(h)(1)(E)

"(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 recommendation 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.

FWPC Sec. 404(h)(1)(F)

"(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 water would be substantially impaired thereby.

FWPC Sec. 404(h)(1)(G)

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

FWPC Sec. 404(h)(1)(H)

"(H) To assure continued coordination with Federal and Federal-State water-related planning and review processes.

FWPC Sec. 404(h)(2)

"(2) If, with respect to a State program SUBmitted under subsection (g)(1) of this section, the Administrator determines that such State

FWPC Sec. 404(h)(2)(A)

"(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 subsection (a) and (e) of this section for activities with respect to which a permit may be issued pursuant to such State program; or

FWPC Sec. 404(h)(2)(B)

"(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.

FWPC Sec. 404(h)(3)

"(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.

FWPC Sec. 404(h)(4)

"(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 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.

FWPC Sec. 404(h)(5)

"(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.

FWPC Sec. 404(i)

"(i) Whenever the Administrator determines after public hearing that a State is not administering a program approved under section (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.

FWPC Sec. 404(j)

"(j) 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), 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 Act.

FWPC Sec. 404(k)

"(k) In accordance with guidelines promulgated pursuant to subsection (h)(2) of section 304 of this Act, 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.

FWPC Sec. 404(l)

"(l) 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.

FWPC Sec. 404(m)

"(m) 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.

FWPC Sec. 404(n)

"(n) Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 309 of this Act .

FWPC Sec. 404(o)

"(o) 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.

FWPC Sec. 404(p)

"(p) 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 309 and 505 , with sections 301 , 307 , and 403 .

FWPC Sec. 404(q)

"(q) Not later than the one-hundred- eighthieth day after the date of enactment of this subsection, 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 of such application is published under subsection (a) of this section.

FWPC Sec. 404(r)

"(r) 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 the date of enactment of this subsection, is not prohibited by or otherwise subject to regulation under this section, or a State program approved under this section, or section 301(a) or 402 of the Act (except for effluent standards or prohibitions under section 307 ), 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 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 each construction.

FWPC Sec. 404(s)

"(s) "(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 persons to comply with such condition or limitation, or the Secretary shall bring a civil action in accordance with paragraph (3) of this subsection.

FWPC Sec. 404(s)(2)

"(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.

FWPC Sec. 404(s)(3)

"(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.

FWPC Sec. 404(s)(4)

"(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.

[Former 404(s)(4) deleted and (5) amended and redesignated as (4) by

PL 100-4]

FWPC Sec. 404(t)

"(t) 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.

### **Sec. 405 [33 USC 1345] Disposal of Sewage Sludge**

FWPC Sec. 405(a)

"(a) Notwithstanding any other provision of this Act or of any other law, in the case where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 212 of this Act (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 402 of this Act .

FWPC Sec. 405(b)

"(b) 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 402 of this Act . Such regulations shall require the application to such disposal of each criterion, factor, procedure, and requirement applicable to a permit issued under section 402 of this title .

FWPC Sec. 405(c)

"(c) 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 402 of this Act .

FWPC Sec. 405(d)

"(d) Regulations.

FWPC Sec. 405(d)(1)

"(1) Regulations. The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this subsection 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

FWPC Sec. 405(d)(1)(A)

"(A) identify uses for sludge, including disposal;

FWPC Sec. 405(d)(1)(B)

"(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);

FWPC Sec. 405(d)(1)(C)

"(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.

FWPC Sec. 405(d)(2)

"(2) Identification and Regulation of Toxic Pollutants.

FWPC Sec. 405(d)(2)(A)

"(A) On Basis of Available Information.

FWPC Sec. 405(d)(2)(A)(i)

"(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).

FWPC Sec. 405(d)(2)(A)(ii)

"(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).

FWPC Sec. 405(d)(2)(B)

"(B) Others.

FWPC Sec. 405(d)(2)(B)(i)

"(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).

FWPC Sec. 405(d)(2)(B)(ii)

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

FWPC Sec. 405(d)(2)(C)

"(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.

FWPC Sec. 405(d)(2)(D)

"(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.

[405(d)(2)(5) added by PL 100-4]

FWPC Sec. 405(d)(3)

"(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.

[405(d)(3) added by PL 100-4]

FWPC Sec. 405(d)(4)

"(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 402 of this Act 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.

[405(d)(4) added by PL 100-4]

FWPC Sec. 405(d)(5)

"(5) Limitation on Statutory Construction. Nothing in this section is intended to waive more stringent requirements established by this Act or any other law.

[405(d)(5) added by PL 100-4]

FWPC Sec. 405(e)

"(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.

[405(e) revised by PL 100-4]

FWPC Sec. 405(f)

"(f) Implementation of Regulations.

FWPC Sec. 405(f)(1)

"(1) Through section 402 Permits. Any permit issued under section 402 of this Act 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, part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, 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.

FWPC Sec. 405(f)(2)

"(2) Through Other Permits. In the case of a treatment works described in paragraph (1) that is not subject to section 402 of this Act 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.

[405(f) added by PL 100-4]

FWPC Sec. 405(g)

"(g) Studies and Projects.

FWPC Sec. 405(g)(1)

"(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.

FWPC Sec. 405(g)(2)

"(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.

[405(g) added by PL 100-4]

### **Sec. 501 [33 USC 1361] Administration**

FWPC Sec. 501(a)

"(a) The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act.

FWPC Sec. 501(b)

"(b) The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as may be found necessary to assist in carrying out the purposes of this Act.

FWPC Sec. 501(c)

"(c) Each recipient of financial assistance under this Act shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

FWPC Sec. 501(d)

"(d) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books,

documents, papers, and records of the recipients that are pertinent to the grants received under this Act. For the purpose of carrying out audits and examinations with respect to recipients of Federal assistance under this Act, the Administrator is authorized to enter into noncompetitive procurement contracts with independent State audit organizations, consistent with chapter 75 of title 31, United States Code. Such contracts may only be entered into to the extent and in such amounts as may be provided in advance in appropriation Acts.

[501(d) amended by PL 100-4]

FWPC Sec. 501(e)

"(e) "(1) It is the purpose of this subsection to authorize a program which will provide official recognition by the United States Government to those industrial organizations and political subdivisions of States which during the preceding year demonstrated an outstanding technological achievement or an innovative process, method, or device in their waste treatment and pollution abatement programs. The Administrator shall, in consultation with the appropriate State water pollution control agencies, establish regulations under which such recognition may be applied for and granted, except that no applicant shall be eligible for an award under this subsection if such applicant is not in total compliance with all applicable water quality requirements under this Act, or otherwise does not have a satisfactory record with respect to environmental quality.

FWPC Sec. 501(e)(2)

"(2) The Administrator shall award a certificate or plaque of suitable design to each industrial organization or political subdivision which qualifies for such recognition under regulations established under this subsection.

FWPC Sec. 501(e)(3)

"(3) The President of the United States, the Governor of the appropriate State, the Speaker of the House of Representatives, and the President pro tempore of the Senate shall be notified of the award by the Administrator and the awarding of such recognition shall be published in the Federal Register.

FWPC Sec. 501(f)

"(f) Upon the request of a State water pollution control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this Act.

## **Sec. 502 [33 USC 1362] General Definitions**

"Except as otherwise specifically provided, when used in this Act:

FWPC Sec. 502(1)

"(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.

FWPC Sec. 502(2)

"(2) The term "interstate agency" means an agency of two or more States established by or pursuant to an agreement of 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.

FWPC Sec. 502(3)

"(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.

[502(3) amended by PL 100-4]

FWPC Sec. 502(4)

"(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 208 of this Act .

FWPC Sec. 502(5)

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

FWPC Sec. 502(6)

"(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" within the meaning of section 312 of this Act ; 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.

FWPC Sec. 502(7)

"(7) The term "navigable waters" means the waters of the United States, including the territorial seas.

FWPC Sec. 502(8)

"(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.

FWPC Sec. 502(9)

"(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.

FWPC Sec. 502(10)

"(10) The term "ocean" means any portion of the high seas beyond the contiguous zone.

FWPC Sec. 502(11)

"(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.

FWPC Sec. 502(12)

"(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.

FWPC Sec. 502(13)

"(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.

FWPC Sec. 502(14)

"(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.

[502(14) amended by PL 100-4]

[Note: Section 507 of PL 100-4 states:

Sec. 507. Definition of Point Source.

"For purposes of the Federal Water Pollution Control Act, the term "point source" includes a landfill leachate collection system."]

FWPC Sec. 502(15)

"(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.

FWPC Sec. 502(16)

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

FWPC Sec. 502(17)

"(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.

FWPC Sec. 502(18)

"(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 "Division D Manufacturing" and such other classes of significant waste products as, by regulation, the Administrator deems appropriate.

FWPC Sec. 502(19)

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

FWPC Sec. 502(20)

"(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.

[502(20) added by PL 100-688]

### **Sec. 503 [33 USC 1363] Water Pollution Control Advisory Board**

FWPC Sec. 503(a)

"(a) "(1) There is hereby established in the Environmental Protection Agency a Water Pollution Control Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and nine members appointed by the President, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this Act, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of pollution prevention and control, as well as other individuals who are expert in this field.

FWPC Sec. 503(a)(2)

"(2) "(A) Each member appointed by the President shall hold office for a term of three years, except that "(i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and "(ii) the terms of office of the members first taking office after June 30, 1956, shall expire as follows: three at the end of one year after such date, three at the end of two years after such date, and three at the end of three years after such date, as designated by the President at the time of appointment, and "(iii) the term of any member under the preceding provisions shall be extended until the date on which his



successor's appointment is effective. None of the members appointed by the President shall be eligible for reappointment within one year after the end of his preceding term.

FWPC Sec. 503(a)(2)(B)

"(B) The members of the Board who are not officers or employees of the United States, while attending conferences or meetings of the Board or while otherwise serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding \$100 per diem, including travel-time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b-2) for persons in the Government service employed intermittently.

FWPC Sec. 503(b)

"(b) The Board shall advise, consult with, and make recommendations to the Administrator on matters of policy relating to the activities and functions of the Administrator under this Act.

FWPC Sec. 503(c)

"(c) Such clerical and technical assistance as may be necessary to discharge the duties of the Board shall be provided from the personnel of the Environmental Protection Agency.

#### **Sec. 504 [33 USC 1364] Emergency Powers**

FWPC Sec. 504(a)

"(a) Notwithstanding any other provision of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment is to the livelihood of such persons, such as inability to market shellfish, may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to such pollution or to take such other action as may be necessary.

FWPC Sec. 504(b)

"(b) [Repealed]

[504(b) repealed by PL 96-510]

#### **Sec. 505 [33 USC 1365] Citizen Suits**

FWPC Sec. 505(a)

"(a) Except as provided in subsection (b) of this section, and section 309(g)(6) any citizen may commence a civil action on his own behalf

[505(a) amended by PL 100-4]

FWPC Sec. 505(a)(1)

"(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 Act or "(B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

FWPC Sec. 505(a)(2)

"(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act 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 309(d) of this Act.

FWPC Sec. 505(b)

"(b) No action may be commenced

FWPC Sec. 505(b)(1)

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

FWPC Sec. 505(b)(1)(A)

"(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

FWPC Sec. 505(b)(1)(B)

"(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.

FWPC Sec. 505(b)(2)

"(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 306 and 307(a) of this Act. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

FWPC Sec. 505(c)

"(c) "(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.

FWPC Sec. 505(c)(2)

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

FWPC Sec. 505(c)(3)

"(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.

[505(c)(3) added by PL 100-4]

FWPC Sec. 505(d)

"(d) 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.

[505(d) amended by PL 100-4]

FWPC Sec. 505(e)

"(e) 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).

FWPC Sec. 505(f)

"(f) For purposes of this section, the term "effluent standard or limitation under this Act" means "(1) effective July 1, 1973, an unlawful act under subsection (a) of section 301 of this Act; "(2) an effluent limitation or other limitation under section 301 or 302 of this Act ; "(3) standard of performance under section 306 of this Act ; "(4) prohibition, effluent standard or pretreatment standards under section 307 of this Act ; "(5) certification under section 401 of this Act ; "(6) a permit or condition thereof issued under section 402 of this Act , which is in effect under this Act (including a requirement applicable by reason of section 313 of this Act ); or "(7) a regulation under section 405(d) of this Act.

[505(f) amended by PL 100-4]

FWPC Sec. 505(g)

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

FWPC Sec. 505(h)

"(h) A Governor of a State may commence a civil action under subsection (a), 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 Act 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.

## **Sec. 506 [33 USC 1366] Appearance**

"The Administrator shall request the Attorney General to appear and represent the United States in any civil or criminal action instituted under this Act to which the Administrator is a party. Unless the Attorney General notifies the Administrator within a reasonable time, that he will appear in a civil action, attorneys who are officers or employees of the Environmental Protection Agency shall appear and represent the United States in such action.

## **Sec. 507 [33 USC 1367] Employee Protection**

FWPC Sec. 507(a)

"(a) No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

FWPC Sec. 507(b)

"(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged

discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the

violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator are subject to judicial review under this Act.

FWPC Sec. 507(c)

"(c) Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees), as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

FWPC Sec. 507(d)

"(d) This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any prohibition of effluent limitation or other limitation under section 301 or 302 of this Act , standards of performance under section 306 of this Act , effluent standard, prohibition or pretreatment standard under section 307 of this Act , or any other prohibition or limitation established under this Act.

FWPC Sec. 507(e)

"(e) The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the issuance of any effluent limitation or order under this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such limitation or order. Any employee who is discharged or laid off, threatened with discharge or lay-off, or otherwise discriminated against by any person because of the alleged results of any effluent limitation or order issued under this Act, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days notice, and shall at such hearing require the parties, including the employer involved, to present information relating to the actual or potential effect of such limitation or order on employment and on any alleged discharge, lay off, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such effluent limitation or order on employment and on the alleged discharge, lay-off, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator to modify or withdraw any effluent limitation or order issued under this Act.

**Sec. 508 [33 USC 1368] Federal Procurement**

FWPC Sec. 508(a)

"(a) No Federal agency may enter into any contract with any person, who has been convicted of any offense under section 309(c) of this Act , for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

FWPC Sec. 508(b)

"(b) The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

FWPC Sec. 508(c)

"(c) In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's water, the President shall, not more than one hundred and eighty days after enactment of this Act, cause to be issued an order "(1) requiring each Federal agency authorized to enter into

contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and "(2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

FWPC Sec. 508(d)

"(d) The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

FWPC Sec. 508(e)

"(e) The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance.

### **Sec. 509 [33 USC 1369] Administrative Procedure and Judicial Review**

FWPC Sec. 509(a)

"(a) "(1) For the purposes of obtaining information under section 305 of this Act , or carrying out section 507(e) of this Act, the Administrator may issue subpoenas 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 of the United States Code, 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 Act, or when relevant in any proceeding under this Act. 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 subpoena 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.

FWPC Sec. 509(a)(2)

"(2) The district courts of the United States are authorized, upon application by the Administrator, to issue subpoenas for attendance and testimony of witnesses and the production of relevant papers, books, and documents, for purposes of obtaining information under sections 304(b) and (c) of this Act. Any papers, books, documents, or other information or part thereof, obtained by reason of such a subpoena shall be subject to the same requirements as are provided in paragraph (1) of this subsection.

FWPC Sec. 509(b)

"(b) "(1) Review of the Administrator's action "(A) in promulgating any standard of performance under section 306 , "(B) in making any determination pursuant to section 306(b)(1)(C), "(C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 307 , "(D) in making any determination as to a State permit program submitted under section 402(b), "(E) in approving or promulgating any effluent limitation or other limitation under sections 301 , 302 , 306 , or 405 , [,] "(F) in issuing or denying any permit under section 402 , and "(G) in promulgating any individual control strategy under section 304(l), 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.

[509(b)(1) amended by PL 100-4]

FWPC Sec. 509(b)(2)

"(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.

FWPC Sec. 509(b)(3)

"(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.

[Former 509(b)(3) repealed and 509(b)(4) as added by PL 100-4 redesignated as (3) by PL 100-236]

FWPC Sec. 509(c)

"(c) In any judicial proceeding brought under subsection (b) of this section in which review is sought of a determination under this Act 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.

### **Sec. 510 [33 USC 1370] State Authority**

"Except as expressly provided in this Act, nothing in this Act shall

"(1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce "(A) any standard or limitation respecting discharges of pollutants, or "(B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is

in effect under this Act, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under this Act; or

"(2) be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.

### **Sec. 511 [33 USC 1371] Other Affected Authority**

#### FWPC Sec. 511(a)

"(a) This act shall not be construed as "(1) limiting the authority or functions of any officer or agency of the United States under any other law or regulation not inconsistent with this Act; "(2) affecting or impairing the authority of the Secretary of the Army "(A) to maintain navigation or "(B) under the Act of March 3, 1899 (30 Stat. 1112); except that any permit issued under section 404 of this Act shall be conclusive as to the effect on water quality of any discharge resulting from any activity subject to section 10 of the Act of March 3, 1899, or "(3) affecting or impairing the provisions of any treaty of the United States.

#### FWPC Sec. 511(b)

"(b) Discharges of pollutants into the navigable waters subject to the Rivers and Harbors Act of 1910 (36 Stat. 593; 33 U.S.C. 421) and the Supervisory Harbors Act of 1888 (25 Stat. 209; 33 U.S.C. 441-451b) shall be regulated pursuant to this Act, and not subject to such Act of 1910 and the Act of 1888 except as to effect on navigation and anchorage.

#### FWPC Sec. 511(c)

"(c) "(1) Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works as authorized by section 201 of this Act , and the issuance of a permit under section 402 of this Act for the discharge of any pollutant by a new source as defined in section 306 of this Act , no action of the Administrator taken pursuant to this Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852); and

#### FWPC Sec. 511(c)(2)

"(2) Nothing in the National Environmental Policy Act of 1969 (83 Stat. 852) shall be deemed to

#### FWPC Sec. 511(c)(2)(A)

"(A) authorize any Federal agency authorized to license or permit the conduct of any activity which may result in the discharge of a pollutant into the navigable waters to review any effluent limitation or other requirement established pursuant to this Act or the adequacy of any certification under section 401 of this Act ; or

#### FWPC Sec. 511(c)(2)(B)

"(B) authorize any such agency to impose, as a condition precedent to the issuance of any license or permit, any effluent limitation other than any such limitation established pursuant to this Act.



FWPC Sec. 511(d)

"(d) Notwithstanding this Act or any other provision of law, the Administrator "(1) shall not require any State to consider in the development of the ranking in order of priority of needs for the construction of treatment works (as defined in title II of this Act), any water pollution control agreement which may have been entered into between the United States and any other nation, and "(2) shall not consider any such agreement in the approval of any such priority ranking.

### **Sec. 512 Separability**

"If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

### **Sec. 513 [33 USC 1372] Labor Standards**

"The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on treatment works for which grants are made under this Act shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor, in accordance with the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C., sec. 276a through 276a-5). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c).

### **Sec. 514 [33 USC 1373] Public Health Agency Coordination**

"The permitting agency under section 402 shall assist the applicant for a permit under such section in coordinating the requirements of this Act with those of the appropriate public health agencies.

### **Sec. 515 [33 USC 1374] Effluent Standards and Water Quality Information Advisory Committee**

FWPC Sec. 515(a)

"(a) "(1) There is established an Effluent Standards and Water Quality Information Advisory Committee, which shall be composed of a Chairman and eight members who shall be appointed by the Administrator within sixty days after the date of enactment of this Act.

FWPC Sec. 515(a)(2)

"(2) All members of the Committee shall be selected from the scientific community, qualified by education, training, and experience to provide, assess, and evaluate scientific and technical information on effluent standards and limitations.

FWPC Sec. 515(a)(3)

"(3) Members of the Committee shall serve for a term of four years, and may be reappointed.

FWPC Sec. 515(b)

"(b) "(1) No later than one hundred and eight days prior to the date on which the Administrator is required to publish any proposed regulations required by section 304(b) of this Act, any proposed standard of performance for new sources required by section 306 of this Act , or any proposed toxic effluent standard required by section 307 of this Act , he shall transmit to the Committee a notice of intent to propose such regulations. The Chairman of the Committee within ten days after receipt of such notice may publish a notice of a public hearing by the Committee, to be held within thirty days.

FWPC Sec. 515(b)(2)

"(2) No later than one hundred and twenty days after receipt of such notice, the Committee shall transmit to the Administrator such scientific and technical information as is in its possession, including that presented at any public hearing, related to the subject matter contained in such notice.

FWPC Sec. 515(b)(3)

"(3) Information so transmitted to the Administrator shall constitute a part of the administrative record and comments on any proposed regulations or standards as information to be considered with other comments and information in making any final determinations.

FWPC Sec. 515(b)(4)

"(4) In preparing information for transmittal, the Committee shall avail itself of the technical and scientific services of any Federal agency, including the United States Geological Survey and any national environmental laboratories which may be established.

FWPC Sec. 515(c)

"(c) "(1) The Committee shall appoint and prescribe the duties of a Secretary, and such legal counsel as it deems necessary to exercise and fulfill its powers and responsibilities. The compensation of all employees appointed by the Committee shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title V of the United States Code.

FWPC Sec. 515(c)(2)

"(2) Members of the Committee shall be entitled to receive compensation at a rate to be fixed by the President but not in excess of the maximum rate of pay for GS-18, as provided in the General Schedule under section 5332 of title V of the United States Code.

FWPC Sec. 515(d)

"(d) Five members of the Committee shall constitute a quorum, and official actions of the Committee shall be taken only on the

affirmative vote of at least five members. A special panel composed of one or more members upon order of the Committee shall conduct any hearing authorized by this section and submit the transcript of such hearing to the entire Committee for its action thereon.

FWPC Sec. 515(e)

"(e) The Committee is authorized to make such rules as are necessary for the orderly transaction of its business.

### **Sec. 516 [33 USC 1375] Reports to Congress**

#### **FWPC Sec. 516(a)**

"(a) Within ninety days following the convening of each session of Congress, the Administrator shall submit to the Congress a report, in addition to any other report required by this Act, on measures taken toward implementing the objective of this Act, including, but not limited to, "(1) the progress and problems associated with developing comprehensive plans under section 102 of this Act , area-wide plans under section 208 of this Act , basin plans under section 209 of this Act , and plans under section 303(e) of this Act; "(2) a summary of actions taken and results achieved in the field of water pollution control research, experiments, studies, and related matters by the Administrator and other Federal agencies and by other persons and agencies under Federal grants or contracts; "(3) the progress and problems associated with the development of effluent limitations and recommended control techniques; "(4) the status State programs, including a detailed summary of the progress obtained as compared to that planned under State program plans for development and enforcement of water quality requirements; "(5) the identification and status of enforcement actions pending or completed under such Act during the preceding year; "(6) the status of State, interstate, and local pollution control programs established pursuant to, and assisted by, this Act; "(7) a summary of the results of the survey required to be taken under section 210 of this Act ; "(8) his activities including recommendations under sections 109 through 111 of this Act ; and "(9) all reports and recommendations made by the Water Pollution Control Advisory Board.

#### **FWPC Sec. 516(b)**

"(b) "(1) The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning agencies, shall make "(A) a detailed estimate of the cost of carrying out the provisions of this Act; "(B) a detailed estimate, biennially revised, of the cost of construction of all needed publicly owned treatment works in all of the States and of the cost of construction of all needed publicly owned treatment works in each of the States; "(C) a comprehensive study of the economic impact on affected units of government of the cost of installation of treatment facilities; and "(D) a comprehensive analysis of the national requirements for and the cost of treating municipal, industrial, and other effluent to attain the water quality objectives as established by this Act or applicable State law. The Administrator shall submit such detailed estimate and such comprehensive study of such cost to the Congress no later than February 10 of each odd-numbered year. Whenever the Administrator, pursuant to this subsection, requests and receives an estimate of cost from a State, he shall furnish copies of such estimate together with such detailed estimate to Congress.

#### **FWPC Sec. 516(b)(2)**

"(2) Notwithstanding the second sentence of paragraph (1) of this subsection, the Administrator shall make a preliminary detailed estimate called for by subparagraph (B) of such paragraph and shall submit such preliminary detailed estimate to the Congress no later than September 3, 1974. The Administrator shall require each State to prepare an estimate of cost for such State, and shall utilize the survey form EPA-1, O.M.B. No. 158-R0017, prepared for the 1973 detailed estimate, except that such estimate shall include all costs of compliance with section 201(g)(2)(A) of this Act and water

quality standards established pursuant to section 303 of this Act , and all costs of treatment works as defined in section 212(2), including all eligible costs of constructing sewage collection systems and correcting excessive infiltration or inflow and all eligible costs of correcting combined storm and sanitary sewer problems and treating storm water flows. The survey form shall be distributed by the Administrator to each State no later than January 31, 1974.

FWPC Sec. 516(c)

"(c) The Administrator shall submit to the Congress by October 1, 1978, a report on the status of combined sewer overflows in municipal treatment works operations. The report shall include "(1) the status of any projects funded under this Act to address combined sewer overflows, "(2) a listing by State of combined sewer overflow needs identified in the 1977 State priority listings, "(3) an estimate for

each applicable municipality of the number of years necessary, assuming an annual authorization and appropriation for the construction grants program of \$5,000,000,000 to correct combined sewer overflow problems, "(4) an analysis using representative municipalities faced with major combined sewer overflow needs, of the annual discharges of pollutants from overflows in comparison to treated effluent discharges, "(5) an analysis of the technological alternatives available to municipalities to correct major combined sewer overflow problems, and "(6) any recommendations of the Administrator for legislation to address the problem of combined sewer overflows, including whether a separate authorization and grant program should be established by the Congress to address combined sewer overflows.

FWPC Sec. 516(d)

"(d) The Administrator shall submit to the Congress by October 1, 1978, a report on the status of the use of municipal secondary effluent and sludge for agricultural and other purposes that utilize the nutrient value of treated wastewater effluent. The report shall include "(1) a summary of results of research and development programs, grants, and contracts carried out by the Environmental Protection Agency pursuant to sections 104 and 105 of this Act , regarding alternatives to disposal, landfill, or incineration of secondary effluent of sludge, "(2) an estimate of the amount of sludge generated by public treatment works and its disposition, including an estimate of annual energy costs to incinerate sludge, "(3) an analysis of current technologies for the utilization, reprocessing, and other uses of sludge to utilize the nutrient value of sludge, "(4) legal, institutional, public health, economic, and other impediments to the greater utilization of treated sludge, and "(5) any recommendations of the Administrator for legislation to encourage or require the expanded utilization of sludge for agricultural and other purposes. In carrying out this subsection, the Administrator shall consult with, and use the services of the Tennessee Valley Authority and other departments, agencies and instrumentalities of the United States, to the extent it is appropriate to do so.

FWPC Sec. 516(e)

"(e) The Administrator, in cooperation with the States, including water pollution control agencies, and other water pollution control planning agencies, and water supply and water resources agencies of the States and the United States shall submit to Congress, within two years of the date of enactment of this section, a report with recommendations for legislation on a program to require coordination between water supply and wastewater control plans as a condition to grants for construction of treatment works under this Act. No such report shall be submitted except after

opportunity for public hearings on such proposed report.

FWPC Sec. 516(g)

"(g) State Revolving Fund Report.

FWPC Sec. 516(g)(1)

"(1) In General. Not later than February 10, 1990, the Administrator shall submit to Congress a report on the financial status and operations of water pollution control revolving funds established by the States under title VI of this Act. The Administrator shall prepare such report in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies.

FWPC Sec. 516(g)(2)

"(2) Contents. The report under this subsection shall also include the following:

FWPC Sec. 516(g)(2)(A)

"(A) an inventory of the facilities that are in significant noncompliance with the enforceable requirements of this Act;

FWPC Sec. 516(g)(2)(B)

"(B) an estimate of the cost of construction necessary to bring such facilities into compliance with such requirements;

FWPC Sec. 516(g)(2)(C)

"(C) an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for providing assistance for such construction through September 30, 1999, from the water pollution control revolving funds established by the States under title VI of this Act;

FWPC Sec. 516(g)(2)(D)

"(D) an assessment of the operations, loan portfolio, and loan conditions of such revolving funds;

FWPC Sec. 516(g)(2)(E)

"(E) an assessment of the effect on user charges of the assistance provided by such revolving funds compared to the assistance provided with funds appropriated pursuant to section 207 of this Act ; and

FWPC Sec. 516(g)(2)(F)

"(F) an assessment of the efficiency of the operation and maintenance of treatment works constructed with assistance provided by such revolving funds compared to the efficiency of the operation and maintenance of treatment works constructed with assistance provided under section 201 of this Act .

[516(g) added by PL 100-4]

**Sec. 517 [33 USC 1376] General Authorization**

"There are authorized to be appropriated to carry out this Act, other than sections 104 , 105 , 106(a) , 107 , 108 , 112 , 113 , 114 , 115 , 206 , 207 , 208 (f) and (h), 209 , 304 , 311(c), (d), (i), (l), and (k), 314, 315 , and 317 , \$250,000,000 for the fiscal year ending June 30, 1973, \$300,000,000 for the fiscal year ending June 30, 1974, \$350,000,000 for the fiscal year ending June 30, 1975, \$100,000,000 for the fiscal year ending September 30, 1977, \$150,000,000 for the fiscal year ending September 30, 1978, \$150,000,000 for the fiscal year ending September 30, 1979, \$150,000,000 for the fiscal year ending September 30, 1980, \$150,000,000 for the fiscal year ending September 30, 1981, \$161,000,000 for the fiscal year ending September 30, 1982, such sums as may be necessary for fiscal years 1983 through 1985, and \$135,000,000 per fiscal year for each of the fiscal years 1986 through 1990.

[517 amended by PL 96-483; PL 100-4]

### **Sec. 518 [33 USC 1377] Indian Tribes**

FWPC Sec. 518(a)

"(a) Policy.Nothing in this section shall be construed to affect the application of section 101(g) of this Act, and all of the provisions of this section shall be carried out in accordance with the provisions of such section 101(g). Indian tribes shall be treated as States for purposes of such section 101(g).

FWPC Sec. 518(b)

"(b) Assessment of Sewage Treatment Needs; Report.The Administrator, in cooperation with the Director of the Indian Health Service, shall assess the need for sewage treatment works to serve Indian tribes, the degree to which such needs will be met through funds allotted to States under section 205 of this Act and priority lists under section 216 of this Act , and any obstacles which prevent such needs from being met. Not later than one year after the date of the enactment of this section, the Administrator shall submit a report to Congress on the assessment under this subsection, along with recommendations specifying "(1) how the Administrator intends to provide assistance to Indian tribes to develop waste treatment management plans and to construct treatment works under this Act, and "(2) methods by which the participation in and administration of programs under this Act by Indian tribes can be maximized.

FWPC Sec. 518(c)

"(c) Reservation of Funds.The Administrator shall reserve each fiscal year beginning after September 30, 1986, before allotments to the States under section 205(e), one-half of one percent of the sums appropriated under section 207 . Sums reserved under this subsection shall be available only for grants for the development of waste treatment management plans and for the construction of sewage treatment works to serve Indian tribes as defined in subsection (h) and former Indian reservations in Oklahoma (as determined by the Secretary of the Interior) and Alaska Native Villages as defined in Public Law 92-203.

[518(c) added by PL 100-581]

FWPC Sec. 518(d)

"(d) Cooperative Agreements.In order to ensure the consistent implementation of the requirements of this Act, an Indian tribe and the State or States in which the lands of such tribe are located may enter

into a cooperative agreement, subject to the review and approval of the Administrator, to jointly plan and administer the requirements of this Act.

FWPC Sec. 518(e)

"(e) Treatment as States. The Administrator is authorized to treat an Indian tribe as a State for purposes of title II and sections 104 , 106 , 303 , 305 , 308 , 309 , 314 , 319 , 401 , 402 , and 404 of this Act to the degree necessary to carry out the objectives of this section, but only if

FWPC Sec. 518(e)(1)

"(1) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

FWPC Sec. 518(e)(2)

"(2) the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and

FWPC Sec. 518(e)(3)

"(3) the Indian tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this Act and of all applicable regulations. "Such treatment as a State may include the direct provision of funds reserved under subsection (c) to the governing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator, in cooperation with the Director of the Indian Health Service, is authorized to make grants under title II of this Act in an amount not to exceed 100 percent of the cost of a project. Not later than 18 months after the date of the enactment of this section, the Administrator shall, in consultation with Indian tribes, promulgate final regulations which specify how Indian tribes shall be treated as States for purposes of this Act. The Administrator shall, in promulgating such regulations, consult affected States sharing common water bodies and provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian tribes located on common bodies of water. Such mechanism shall provide for explicit consideration of relevant factors including, but not limited to, the effects of differing water quality permit requirements on upstream and downstream dischargers, economic impacts, and present and historical uses and quality of the waters subject to such standards. Such mechanism should provide for the avoidance of such unreasonable consequences in a manner consistent with the objective of this Act.

FWPC Sec. 518(f)

"(f) Grants for Nonpoint Source Programs. The Administrator shall make grants to an Indian tribe under section 319 of this Act as though such tribe was a State. Not more than one-third of one percent of the amount appropriated for any fiscal year under section 319 may be used to make grants under this subsection. In addition to the requirements of section 319 , an Indian tribe shall be required to meet the requirements of paragraphs (1), (2), and (3) of subsection (d) of this section in order to receive such a grant.

FWPC Sec. 518(g)

"(g) Alaska Native Organizations. No provision of this Act shall be construed to

FWPC Sec. 518(g)(1)

"(1) grant, enlarge, or diminish, or in any way affect the scope of the governmental authority, if any, of any Alaska Native organization, including any federally-recognized tribe, traditional Alaska Native council, or Native Council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), over lands or persons in Alaska;

FWPC Sec. 518(g)(2)

"(2) create or validate any assertion by such organization or any form of governmental authority over lands or person in Alaska; or

FWPC Sec. 518(g)(3)

"(3) in any way affect any assertion that Indian country, as defined in section 1151 of title 18, United States Code, exists or does not exist in Alaska.

FWPC Sec. 518(h)

"(h) Definitions. For purposes of this section, the term

FWPC Sec. 518(h)(1)

"(1) "Federal Indian reservation" means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and

FWPC Sec. 518(h)(2)

"(2) "Indian tribe" means any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

[New 518 added by PL 100-4]

### **Sec. 519 Short Title**

"This Act may be cited as the "Federal Water Pollution Control Act" (commonly referred to as the Clean Water Act).

[Former 518 redesignated as 519 by PL 100-4]

### **Sec. 601 [33 USC 1381] Grants to States for Establishment of Revolving Funds**

FWPC Sec. 601(a)

"(a) General Authority. Subject to the provisions of this title, the Administrator shall make capitalization grants to each State for the purpose of establishing a water pollution control revolving fund for providing assistance "(1) for construction of treatment works (as defined in section 212 of this Act ) which are publicly owned, "(2) for implementing a management program under section 319 , and "(3) for developing and implementing a conservation and management plan under section



320 .

FWPC Sec. 601(b)

"(b) Schedule of Grant Payments. The Administrator and each State shall jointly establish a schedule of payments under which the Administrator will pay to the State the amount of each grant to be made to the State under this title. Such schedule shall be based on the State's intended use plan under section 606(c) of this Act, except that

FWPC Sec. 601(b)(1)

"(1) such payments shall be made in quarterly installments, and

FWPC Sec. 601(b)(2)

"(2) such payments shall be made as expeditiously as possible, but in no event later than the earlier of

FWPC Sec. 601(b)(2)(A)

"(A) 8 quarters after the date such funds were obligated by the State, or

FWPC Sec. 601(b)(2)(B)

"(B) 12 quarters after the date such funds were allotted to the State.

**Sec. 602 [33 USC 1382] Capitalization Grant Agreements.**

FWPC Sec. 602(a)

"(a) General Rule. To receive a capitalization grant with funds made available under this title and section 205(m) of this Act, a State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b) of this section.

FWPC Sec. 602(b)

"(b) Specific Requirements. The Administrator shall enter into an agreement under this section with a State only after the State has established to the satisfaction of the Administrator that

FWPC Sec. 602(b)(1)

"(1) the State will accept grant payments with funds to be made available under this title and section 205(m) of this Act in accordance with a payment schedule established jointly by the Administrator under section 601(b) of this Act and will deposit all such payments in the water pollution control revolving fund established by the State in accordance with this title;

FWPC Sec. 602(b)(2)

"(2) the State will deposit in the fund from State moneys an amount equal to at least 20 percent of the total amount of all capitalization grants which will be made to the State with funds to be made available under this title and section 205(m) of this Act on or before the date on which each quarterly grant payment will be made to the State under this title;

FWPC Sec. 602(b)(3)

"(3) the State will enter into binding commitments to provide assistance in accordance with the requirements of this title in an amount equal to 120 percent of the amount of each such grant payment within 1 year after the receipt of such grant payment;

FWPC Sec. 602(b)(4)

"(4) all funds in the fund will be expended in an expeditious and timely manner;

FWPC Sec. 602(b)(5)

"(5) all funds in the fund as a result of capitalization grants under this title and section 205(m) of this Act will first be used to assure maintenance of progress, as determined by the Governor of the State, toward compliance with enforceable deadlines, goals, and requirements of this Act, including the municipal compliance deadlines;

FWPC Sec. 602(b)(6)

"(6) treatment works eligible under section 603(c)(1) of this Act which will be constructed in whole or in part before fiscal year 1995 with funds directly made available by capitalization grants under this title and section 205(m) of this Act will meet the requirements of, or otherwise be treated (as determined by the Governor of the State) under sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 513 of this Act in the same manner as treatment works constructed with assistance under title II of this Act;

FWPC Sec. 602(b)(7)

"(7) in addition to complying with the requirements of this title, the State will commit or expend each quarterly grant payment which it will receive under this title in accordance with laws and procedures applicable to the commitment or expenditure of revenues of the State;

FWPC Sec. 602(b)(8)

"(8) in carrying out the requirements of section 606 of this Act, the State will use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

FWPC Sec. 602(b)(9)

"(9) the State will require as a condition of making a loan or providing other assistance, as described in section 603(d) of this Act, from the fund that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards and

FWPC Sec. 602(b)(10)

"(10) the State will make annual reports to the Administrator on the actual use of funds in accordance with section 606(d) of this Act.

**Sec. 603 [33 USC 1383] Water Pollution Control Revolving Loan Funds.**

FWPC Sec. 603(a)

"(a) Requirements for Obligation of Grant Funds. Before a State may receive a capitalization grant with funds made available under this title and section 205(m) of this Act, the State shall first establish a water pollution control revolving fund which complies with the requirements of this section.

FWPC Sec. 603(b)

"(b) Administration. Each State water pollution control revolving fund shall be administered by an instrumentality of the State with such powers and limitations as may be required to operate such fund in accordance with the requirements and objectives of this Act.

FWPC Sec. 603(c)

"(c) Projects Eligible for Assistance. The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance "(1) to any municipality intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of this Act ), "(2) for the implementation of a management program established under section 319 of this Act , and "(3) for development and implementation of a conservation and management plan under section 320 of this Act . The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance.

FWPC Sec. 603(d)

"(d) Types of Assistance. Except as otherwise limited by State law, a water pollution control revolving fund of a State under this section may be used only

FWPC Sec. 603(d)(1)

"(1) to make loans, on the condition that

FWPC Sec. 603(d)(1)(A)

"(A) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed 20 years;

FWPC Sec. 603(d)(1)(B)

"(B) annual principal and interest payments will commence not later than 1 year after completion of any project and all loans will be fully amortized not later than 20 years after project completion;

FWPC Sec. 603(d)(1)(C)

"(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans; and

FWPC Sec. 603(d)(1)(D)

"(D) the fund will be credited with all payments of principal and interest on all loans;

FWPC Sec. 603(d)(2)

"(2) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after

March 7, 1985;

FWPC Sec. 603(d)(3)

"(3) to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates;

FWPC Sec. 603(d)(4)

"(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of such bonds will be deposited in the fund;

FWPC Sec. 603(d)(5)

"(5) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

FWPC Sec. 603(d)(6)

"(6) to earn interest on fund accounts; and

FWPC Sec. 603(d)(7)

"(7) for the reasonable costs of administering the fund and conducting activities under this title, except that such amounts shall not exceed 4 percent of all grant awards to such fund under this title.

FWPC Sec. 603(e)

"(e) Limitation to Prevent Double Benefits.If a State makes, from its water pollution revolving fund, a loan which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient of such loan receives a grant under section 201(g) of this Act for construction of such treatment works and an allowance under section 201(l)(1) of this Act for non-Federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

FWPC Sec. 603(f)

"(f) Consistency With Planning Requirements.A State may provide financial assistance from its water pollution control revolving fund only with respect to a project which is consistent with plans, if any, developed under sections 205(j), 208 , 303(e), 319, and 320 of this Act.

FWPC Sec. 603(g)

"(g) Priority List Requirement.The State may provide financial assistance from its water pollution control revolving fund only with respect to a project for construction of a treatment works described in subsection (c)(1) if such project is on the State's priority list under section 216 of this Act . Such assistance may be provided regardless of the rank of such project on such list.

FWPC Sec. 603(h)

"(h) Eligibility of Non-Federal Share of Construction Grant Projects.A State water pollution control

revolving fund may provide assistance (other than under subsection (d)(1) of this section) to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a treatment works project for which such municipality or agency is receiving assistance from the Administrator under any other authority only if such assistance is necessary to allow such project to proceed.

**Sec. 604 [33 USC 1384] Allotment of Funds.**

FWPC Sec. 604(a)

"(a) Formula.Sums authorized to be appropriated to carry out this section for each of fiscal years 1989 and 1990 shall be allotted by the Administrator in accordance with section 205(c) of this Act.

FWPC Sec. 604(b)

"(b) Reservation of Funds for Planning.Each State shall reserve each fiscal year 1 percent of the sums allotted to such State under this section for such fiscal year, or \$100,000, whichever amount is greater, to carry out planning under section 205(j) and 303(e) of this Act.

FWPC Sec. 604(c)

"(c) Allotment Period.

FWPC Sec. 604(c)(1)

"(1) Period of Availability for Grant Award.Sums allotted to a State under this section for a fiscal year shall be available for obligation by the State during the fiscal year for which sums are authorized and during the following fiscal year.

FWPC Sec. 604(c)(2)

"(2) Reallotment of Unobligated Funds.The amount of any allotment not obligated by the State by the last day of the 2-year period of availability established by paragraph (1) shall be immediately reallotted by the Administrator on the basis of the same ratio as is applicable to sums allotted under title II of this Act for the second fiscal year of such 2-year period. None of the funds reallotted by the Administrator shall be reallotted to any State which has not obligated all sums allotted to such State in the first fiscal year of such 2-year period.

**Sec. 605 [33 USC 1385] Corrective Action.**

FWPC Sec. 605(a)

"(a) Notification of Noncompliance. If the Administrator determines that a State has not complied with its agreement with the Administrator under section 602 of this Act or any other requirement of this title, the Administrator shall notify the State of such noncompliance and the necessary corrective action.

FWPC Sec. 605(b)

"(b) Withholding of Payments.If a State does not take corrective action within 60 days after the date a State receives notification of such action under subsection (a), the Administrator shall withhold additional payments to the State until the Administrator is satisfied that the State has taken the

necessary corrective action.

FWPC Sec. 605(c)

"(c) Reallotment of Withheld Payments.If the Administrator is not satisfied that adequate corrective actions have been taken by the State within 12 months after the State is notified of such actions under subsection (a), the payments withheld from the State by the Administrator under subsection (b) shall be made available for reallotment in accordance with the most recent formula for allotment of funds under this title.

**Sec. 606 [33 USC 1386] Audits, Reports, and Fiscal Controls: Intended Use Plan.**

FWPC Sec. 606(a)

"(a) Fiscal Control and Auditing Procedure.Each State electing to establish a water pollution control revolving fund under this title shall establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for

FWPC Sec. 606(a)(1)

"(1) payments received by the fund;

FWPC Sec. 606(a)(2)

"(2) disbursements made by the fund; and

FWPC Sec. 606(a)(3)

"(3) fund balances at the beginning and end of the accounting period.

FWPC Sec. 606(b)

"(b) Annual Federal Audits.The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of funds deposited in the water pollution revolving fund established by such State shall be conducted in accordance with the auditing procedures of the General Accounting Office, including chapter 75 of title 31, United States Code.

FWPC Sec. 606(c)

"(c) Intended Use Plan.After providing for public comment and review, each State shall annually prepare a plan identifying the intended uses of the amounts available to its water pollution control revolving fund. Such intended use plan shall include, but not be limited to

FWPC Sec. 606(c)(1)

"(1) a list of those projects for construction of publicly owned treatment works on the State's priority list developed pursuant to section 216 of this Act and a list of activities eligible for

assistance under sections 319 and 320 of this Act ;

FWPC Sec. 606(c)(2)

"(2) a description of the short- and long- term goals and objectives of its water pollution control revolving fund;

FWPC Sec. 606(c)(3)

"(3) information on the activities to be supported, including a description of project categories, discharge requirements under titles III and IV of this Act, terms of financial assistance, and communities served;

FWPC Sec. 606(c)(4)

"(4) assurances and specific proposals for meeting the requirements of paragraphs (3), (4), (5), and (6) of section 602(b) of this Act; and

FWPC Sec. 606(c)(5)

"(5) the criteria and method established for the distribution of funds.

FWPC Sec. 606(d)

"(d) Annual Report. Beginning the first fiscal year after the receipt of payments under this title, the State shall provide an annual report to the Administrator describing how the State has met the goals and objectives for the previous fiscal year as identified in the plan prepared for the previous fiscal year pursuant to subsection (c) including identification of loan recipients, loan amounts, and loan terms and similar details on other forms of financial assistance provided from the water pollution control revolving fund.

FWPC Sec. 606(e)

"(e) Annual Federal Oversight Review. The Administrator shall conduct an annual oversight review of each State plan prepared under subsection (c), each State report prepared under subsection (d) , and other such materials as are considered necessary and appropriate in carrying out the purposes of this title. After reasonable notice by the Administrator to the State or the recipient of a loan from water pollution control revolving fund, the State or loan recipient shall make available to the Administrator such records as the Administrator reasonably requires to review and determine compliance with this title.

FWPC Sec. 606(f)

"(f) Applicability of Title II Provisions. Except to the extent provided in this title, the provisions of title II shall not apply to grants under this title.

### **Sec. 607 [33 USC 1387] Authorization of Appropriations.**

"There is authorized to be appropriated to carry out the purposes of this title the following sums:

FWPC Sec. 607(1)

"(1) \$1,200,000,000 per fiscal year for each of fiscal years 1989 and 1990;

FWPC Sec. 607(2)

"(2) \$2,400,000,000 for fiscal year 1991;

FWPC Sec. 607(3)

"(3) \$1,800,000,000 for fiscal year 1992;

FWPC Sec. 607(4)

"(4) \$1,200,000,000 for fiscal year 1993; and

FWPC Sec. 607(5)

"(5) \$600,000,000 for fiscal year 1994.