

So the amendment was not agreed to.
After some further time,

¶64.23 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. PALLONE:

Page 81, after line 1, insert the following:

(a) FINDING WITH RESPECT TO HARM CAUSED BY VIOLATIONS.—Section 101 (33 U.S.C. 1251) is further amended by adding at the end the following:

“(i) FINDING WITH RESPECT TO HARM CAUSED BY VIOLATIONS.—Congress finds that a discharge which results in a violation of this Act or a regulation, standard, limitation, requirement, or order issued pursuant to this Act interferes with the restoration and maintenance of the chemical, physical, and biological integrity of any waters into which the discharge flows (either directly or through a publicly owned treatment works), including any waters into which the receiving waters flow, and, therefore, harms those who use or enjoy such waters and those who use or enjoy nearby lands or aquatic resources associated with those waters.

“(j) FINDING WITH RESPECT TO CITIZEN SUITS.—Congress finds that citizen suits are a valuable means of enforcement of this Act and urges the Administrator to take actions to encourage such suits, including providing information concerning violators to citizen groups to assist them in bringing suits, providing expert witnesses and other evidence with respect to such suits, and filing amicus curiae briefs on important issues related to such suits.”.

(b) VIOLATIONS OF REQUIREMENTS OF LOCAL CONTROL AUTHORITIES.—Section 307(d) (33 U.S.C. 1317(d)) is amended by striking the first sentence and inserting the following: “After the date on which (1) any effluent standard or prohibition or pretreatment standard or requirement takes effect under this section or any requirement imposed in a pretreatment program under section 402(a)(3) or 402(b)(8) of this Act takes effect, it shall be unlawful for any owner or operator of any source to operate such source in violation of the effluent standard, prohibition, pretreatment standard, or requirement.”.

(c) INSPECTIONS, MONITORING, AND PROVIDING INFORMATION.—

(1) APPLICABILITY OF REQUIREMENTS.—Section 308(a) (33 U.S.C. 1318(a)) is amended by striking “the owner or operator of any point source” and inserting “a person subject to a requirement of this Act”.

(2) PUBLIC ACCESS TO INFORMATION.—The first sentence of section 308(b) is amended—

(A) by inserting “(including information contained in the Permit Compliance System of the Environmental Protection Agency)” after “obtained under this section”;

(B) by inserting “made” after “shall be”;

(C) by inserting “by computer telecommunication and other means” after “public” the first place it appears.

(3) PUBLIC INFORMATION.—Section 308 is further amended by adding at the end the following:

“(e) PUBLIC INFORMATION.—

“(1) POSTING OF NOTICE OF POLLUTED WATERS.—At each major point of public access (including, at a minimum, beaches, parks, recreation areas, marinas, and boat launching areas) to a body of navigable water that does not meet an applicable water quality standard or that is subject to a fishing and shell fishing ban, advisory, or consumption restriction (issued by a Federal, State, or local authority) due to fish or shellfish contamination, the State within which boundaries all or any part of such body of water

lies shall, either directly or through local authorities, post and maintain a clearly visible sign which—

“(A) indicates the water quality standard that is being violated or the nature and extent of the restriction on fish or shellfish consumption, as the case may be;

“(B) includes (i) information on the environmental and health effects associated with the failure to meet such standard or with the consumption of fish or shellfish subject to the restriction, and (ii) a phone number for obtaining additional information relating to the violation and restriction; and

“(C) will be maintained until the body of water is in compliance with the water quality standard or until all fish and shellfish consumption restrictions are terminated with respect to the body of water, as the case may be.

“(2) NOTICE OF DISCHARGES TO NAVIGABLE WATERS.—Except for permits issued to municipalities for discharges composed entirely of stormwater under section 402 of this Act, each permit issued under section 402 by the Administrator or by a State shall ensure compliance with the following requirements:

“(A) Every permittee shall conspicuously maintain at all public entrances to the facility a clearly visible sign which indicates that the facility discharges pollutants into navigable waters and the location of such discharges; the name, business address, and phone number of the permittee; the permit number; and a location at which a copy of the permit and public information required by this paragraph is maintained and made available for inspection or a phone number for obtaining such information.

“(B) Each permittee which is a publicly owned treatment works shall include in each quarterly mailing of a bill to each customer of the treatment works information which indicates that the treatment works discharges pollutants into the navigable waters and the location of each of such discharges; the name, business address and phone number of the permittee; the permit number; a location at which a copy of the permit and public information required by this paragraph is maintained and made available for inspection or a phone number for obtaining such information; and a list of all violations of the requirements of the permit by the treatment works over the preceding 12-month period.

“(3) REGULATIONS.—

“(A) ISSUANCE.—The Administrator—

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

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

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

“(i) uniform requirements and procedures for identifying and posting bodies of water under paragraph (1);

“(ii) minimum information to be included in signs posted and notices issued pursuant to this subsection;

“(iii) uniform requirements and procedures for fish and shellfish sampling and analysis;

“(iv) uniform requirements for determining the nature and extent of fish and shellfish bans, advisories, and consumption restrictions which—

“(I) address cancer and noncancer human health risks;

“(II) take into account the effects of all fish and shellfish contaminants, including the cumulative and synergistic effects;

“(III) assure the protection of subpopulations who consume higher than average amounts of fish and shellfish or are particu-

larly susceptible to the effects of such contamination;

“(IV) address race, gender, ethnic composition, or social and economic factors, based on the latest available studies of national or regional consumption by and impacts on such subpopulations unless more reliable site-specific data is available;

“(V) are based on a margin of safety that takes into account the uncertainties in human health impacts from such contamination; and

“(VI) evaluate assessments of health risks of contaminated fish and shellfish that are used in pollution control programs developed by the Administrator under this Act.”.

(4) STATE REPORTS.—Section 305(b)(1) (33 U.S.C. 1315(b)(1)) is amended—

(A) by striking “and” at the end of subparagraph (D);

(B) by striking the period at the end of subparagraph (E) and inserting “; and”; and

(C) by adding at the end the following: “(F) a list identifying bodies of water for which signs were posted under section 308(e)(1) in the preceding year.”.

(d) CIVIL PENALTIES.—

(1) ENFORCEMENT OF LOCAL PRETREATMENT REQUIREMENTS.—

(A) COMPLIANCE ORDERS.—

(i) INITIAL ACTION.—Section 309(a)(1) (33 U.S.C. 1319(a)(1)) is amended by inserting after “of this Act,” the following: “or is in violation of any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act,”.

(ii) ISSUANCE OF ORDERS.—Section 309(a)(3) is amended by inserting before “he shall” the following: “or is in violation of any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act,”.

(B) CRIMINAL PENALTIES.—Section 309(c)(3)(A) is amended by inserting before “and who knows” the following: “or knowingly violates any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act,”.

(C) ADMINISTRATIVE PENALTIES.—Section 309(g)(1) is amended by inserting after “or by a State,” the following: “or has violated any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act or an order issued by the Administrator under subsection (a) of this section.”.

(2) TREATMENT OF SINGLE OPERATIONAL UPSETS.—

(A) CRIMINAL PENALTIES.—Section 309(c) is amended by striking paragraph (5) and redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(B) CIVIL PENALTIES.—Section 309(d) is amended by striking the last sentence.

(C) ADMINISTRATIVE PENALTIES.—Section 309(g)(3) is amended by striking the last sentence.

(3) USE OF CIVIL PENALTIES FOR MITIGATION PROJECTS.—

(A) IN GENERAL.—Section 309(d) is amended by inserting after the second sentence the following: “The court may, in the court’s discretion, order that a civil penalty be used for carrying out mitigation projects which are consistent with the purposes of this Act and which enhance the public health or environment.”.

(B) CONFORMING AMENDMENT.—Section 505(a) (33 U.S.C. 1365(a)) is amended by inserting before the period at the end of the last sentence the following: “, including ordering the use of a civil penalty for carrying out mitigation projects”.

(4) DETERMINATION OF AMOUNT OF PENALTIES.—

(A) CIVIL PENALTIES.—Section 309(d) (33 U.S.C. 1319(d)) is amended by inserting “the amount of any penalty previously imposed on the violator by a court or administrative

agency for the same violation or violations," after "economic impact of the penalty on the violator."

(B) ADMINISTRATIVE PENALTIES.—Section 309(g)(3) is amended—

(i) by striking "or savings"; or

(ii) by inserting "the amount of any penalty previously imposed on the violator by a court or administrative agency for the same violation or violations," after "resulting from the violation,".

(5) LIMITATION ON DEFENSES.—Section 309(g)(1) is amended by adding at the end the following: "In a proceeding to assess or review a penalty under this subsection, the adequacy of consultation between the Administrator or the Secretary, as the case may be, and the State shall not be a defense to assessment or enforcement of such penalty."

(6) AMOUNTS OF ADMINISTRATIVE CIVIL PENALTIES.—

(A) GENERAL RULE.—Section 309(g)(2) is amended to read as follows:

"(2) AMOUNT OF PENALTIES; NOTICE; HEARING.—

"(A) MAXIMUM AMOUNT OF PENALTIES.—The amount of a civil penalty under paragraph (1) may not exceed \$25,000 per violation per day for each day during which the violation continues.

"(B) WRITTEN NOTICE.—Before issuing an order assessing a civil penalty under this subsection, the Administrator shall give to the person to be assessed the penalty written notice of the Administrator's proposal to issue the order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed order.

"(C) HEARINGS NOT ON THE RECORD.—If the proposed penalty does not exceed \$25,000, the hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

"(D) HEARINGS ON THE RECORD.—If the proposed penalty exceeds \$25,000, the hearing shall be on the record in accordance with section 554 of title 5, United States Code. The Administrator may issue rules for discovery procedures for hearings under this subparagraph."

(B) CONFORMING AMENDMENTS.—Section 309(g) is amended—

(i) in paragraph (1) by striking "class I civil penalty or a class II";

(ii) in the second sentence of paragraph (4)(C) by striking "(2)(A) in the case of a class I civil penalty and paragraph (2)(B) in the case of a class II civil penalty" and inserting "(2)"; and

(iii) in the first sentence of paragraph (8) by striking "assessment—" and all that follows through "by filing" and inserting "assessment in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred by filing".

(7) STATE ENFORCEMENT ACTIONS AS BAR TO FEDERAL ENFORCEMENT ACTIONS.—Section 309(g)(6)(A) is amended—

(A) by inserting "or" after the comma at the end of clause (i);

(B) by striking clause (ii); and

(C) in clause (iii)—

(i) by striking "or the State"; and

(ii) by striking "or such comparable State law, as the case may be,".

(8) RECOVERY OF ECONOMIC BENEFIT.—Section 309 is amended by adding at the end the following:

"(h) RECOVERY OF ECONOMIC BENEFIT.—

"(1) GENERAL RULE.—Notwithstanding any other provision of this section, any civil penalty assessed and collected under this section must be in an amount which is not less than the amount of the economic benefit (if

any) resulting from the violation for which the penalty is assessed.

"(2) REGULATIONS.—Not later than 2 years after the date of the enactment of this subsection, the Administrator shall issue regulations establishing a methodology for calculating the economic benefits or savings resulting from violations of this Act. Pending issuance of such regulations, this subsection shall be in effect and economic benefits shall be calculated for purposes of paragraph (1) on a case-by-case basis."

(9) LIMITATION ON COMPROMISES.—Section 309 is further amended by adding at the end the following:

"(i) LIMITATION ON COMPROMISES OF CIVIL PENALTIES.—Notwithstanding any other provision of this section, the amount of a civil penalty assessed under this section may not be compromised below the amount determined by adding—

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

"(2) 50 percent of the difference between the amount of the civil penalty assessed and such minimum amount."

(10) MINIMUM AMOUNT FOR SERIOUS VIOLATIONS.—Section 309 is further amended by adding at the end the following:

"(j) MINIMUM CIVIL PENALTIES FOR SERIOUS VIOLATIONS AND SIGNIFICANT NONCOMPLIERS.—

"(1) SERIOUS VIOLATIONS.—Notwithstanding any other provision of this section (other than paragraph (2)), the minimum civil penalty which shall be assessed and collected under this section from a person—

"(A) for a discharge from a point source of a hazardous pollutant which exceeds or otherwise violates any applicable effluent limitation established by or under this Act by 20 percent or more, or

"(B) for a discharge from a point source of a pollutant (other than a hazardous pollutant) which exceeds or otherwise violates any applicable effluent limitation established by or under this Act by 40 percent or more,

shall be \$1,000 for the first such violation in a 180-day period.

"(2) SIGNIFICANT NONCOMPLIERS.—Notwithstanding any other provision of this section, the minimum civil penalty which shall be assessed and collected under this section from a person—

"(A) for the second or more discharge in a 180-day period from a point source of a hazardous pollutant which exceeds or otherwise violates any applicable effluent limitation established by or under this Act by 20 percent or more,

"(B) for the second or more discharge in a 180-day period from a point source of a pollutant (other than a hazardous pollutant) which exceeds or otherwise violates any applicable effluent limitation established by or under this Act by 40 percent or more,

"(C) for the fourth or more discharge in a 180-day period from a point source of any pollutant which exceeds or otherwise violates the same effluent limitation, or

"(D) for not filing in a 180-day period 2 or more reports in accordance with section 402(r)(1),

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

"(3) MANDATORY INSPECTIONS FOR SIGNIFICANT NONCOMPLIERS.—The Administrator shall identify any person described in paragraph (2) as a significant noncomplier and shall conduct an inspection described in section 402(q) of this Act of the facility at which the violations were committed. Such inspections shall be conducted at least once in the 180-day period following the date of the most recent violation which resulted in such person being identified as a significant noncomplier.

"(4) ANNUAL REPORTING.—The Administrator shall transmit to Congress and to the Governors of the States, and shall publish in the Federal Register, on an annual basis a list of all persons identified as significant noncompliers under paragraph (3) in the preceding calendar year and the violations which resulted in such classifications.

"(5) HAZARDOUS POLLUTANT DEFINED.—For purposes of this subsection, the term 'hazardous pollutant' has the meaning the term 'hazardous substance' has under subsection (c)(7) of this section."

(11) STATE PROGRAM.—Section 402(b)(7) (33 U.S.C. 1342(b)(7)) is amended to read as follows:

"(7) To abate violations of the permit or the permit program which shall include, beginning on the last day of the 2-year period beginning on the date of the enactment of the Clean Water Compliance and Enforcement Improvement Amendments Act of 1995, a penalty program comparable to the Federal penalty program under section 309 of this Act and which shall include at a minimum criminal, civil, and civil administrative penalties, and may include other ways and means of enforcement, which the State demonstrates to the satisfaction of the Administrator are equally effective as the Federal penalty program."

(12) FEDERAL PROCUREMENT COMPLIANCE INCENTIVE.—Section 508(a) (33 U.S.C. 1368(a)) is amended by inserting after the second comma "or who is identified under section 309(j)(3) of this Act,".

(e) NATIONAL POLLUTANT DISCHARGE ELIMINATION PERMITS.—

(1) WITHDRAWAL OF STATE PROGRAM APPROVAL.—Section 402(b) (33 U.S.C. 1342(b)) is amended by striking "unless he determines that adequate authority does not exist:" and inserting the following: "only when he determines that adequate authority exists and shall withdraw program approval whenever he determines that adequate authority no longer exists:".

(2) JUDICIAL REVIEW OF RULINGS ON APPLICATIONS FOR STATE PERMITS.—Section 402(b)(3) is amended by inserting "and to ensure that any interested person who participated in the public comment process and any other person who could obtain judicial review of that action under any other applicable law has the right to judicial review of such ruling" before the semicolon at the end.

(3) INSPECTIONS FOR MAJOR INDUSTRIAL AND MUNICIPAL DISCHARGERS.—Section 402(b) is amended—

(A) by striking "and" at the end of paragraph (8);

(B) by striking the period at the end of paragraph (9) and inserting a semicolon; and

(C) by adding at the end the following:

"(10) To ensure that any permit for a discharge from a major industrial or municipal facility, as defined by the Administrator by regulation, includes conditions under which such facility will be subject to at least annual inspections by the State in accordance with subsection (q) of this section;".

(4) MONTHLY REPORTS FOR SIGNIFICANT INDUSTRIAL USERS OF POTWS.—Section 402(b) is further amended by adding at the end the following:

"(11) To ensure that any permit for a discharge from a publicly owned treatment works in the State includes conditions under which the treatment works will require any significant industrial user of the treatment works, as defined by the Administrator by regulation, to prepare and submit to the Administrator, the State, and the treatment works a monthly discharge monitoring report as a condition to using the treatment works;".

(5) PERMITS REQUIRED FOR INTRODUCTION OF POLLUTANTS INTO POTWS.—Section 402(b) is

further amended by adding at the end the following:

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

(6) GRANTING OF AUTHORITY TO POTWS FOR INSPECTIONS AND PENALTIES.—Section 402(b) is further amended by adding at the end the following:

“(13) To ensure that the State will grant to publicly owned treatment works in the State, not later than 3 years after the date of the enactment of this paragraph, authority, power, and responsibility to conduct inspections under subsection (g) of this section and to assess and collect civil penalties and civil administrative penalties under paragraph (7) of this subsection.”.

(7) INSPECTION.—Section 402 is amended by adding at the end the following:

“(r) INSPECTION.—

“(1) GENERAL RULE.—Each permit for a discharge into the navigable waters or introduction of pollutants into a publicly owned treatment works issued under this section shall include conditions under which the effluent being discharged will be subject to random inspections in accordance with this subsection by the Administrator or the State, in the case of a State permit program under this section.

“(2) MINIMUM STANDARDS.—The Administrator shall establish minimum standards for inspections under this subsection. Such standards shall require, at a minimum, the following:

“(A) An annual representative sampling by the Administrator or the State, in the case of a State permit program under this section, of the effluent being discharged; except that if the discharge is not from a major industrial or municipal facility such sampling shall be conducted at least once every 3 years.

“(B) An analysis of all samples collected under subparagraph (A) by a Federal or State owned and operated laboratory or a State approved laboratory, other than one that is being used by the permittee or that is directly or indirectly owned, operated, or managed by the permittee.

“(C) An evaluation of the maintenance record of any treatment equipment of the permittee.

“(D) An evaluation of the sampling techniques used by the permittee.

“(E) A random check of discharge monitoring reports of the permittee for each 12-month period for the purpose of determining whether or not such reports are consistent with the applicable analyses conducted under subparagraph (B).

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

(8) REPORTING.—Section 402 is further amended by adding at the end the following:

“(s) REPORTING.—

“(1) GENERAL RULE.—Each person holding a permit issued under this section which is determined by the Administrator to be a major industrial or municipal discharger of pollutants into the navigable waters shall prepare and submit to the Administrator a monthly discharge monitoring report. Any other person holding a permit issued under this section shall prepare and submit to the Administrator quarterly discharge monitoring reports or more frequent discharge monitoring reports if the Administrator requires. Such reports shall contain, at a minimum, such information as the Administrator shall require by regulation.

“(2) REPORTING OF HAZARDOUS DISCHARGES.—

“(A) GENERAL RULE.—If a discharge from a point source for which a permit is issued under this section exceeds an effluent limitation contained in such permit which is based on an acute water quality standard or any other discharge which may cause an exceedance of an acute water quality standard or otherwise is likely to cause injury to persons or damage to the environment or to pose a threat to human health and the environment, the person holding such permit shall notify the Administrator, in writing, of such discharge not later than 2 hours after the later of the time at which such discharge commenced or the time at which the permittee knew or had reason to know of such discharge.

“(B) SPECIAL RULE FOR HAZARDOUS POLLUTANTS.—If a discharge described in subparagraph (A) is of a hazardous pollutant (as defined in section 309(j) of this Act), the person holding such permit shall provide the Administrator with such additional information on the discharge as may be required by the Administrator. Such additional information shall be provided to the Administrator within 24 hours after the later of the time at which such discharge commenced or the time at which the permittee became aware of such discharge. Such additional information shall include, at a minimum, an estimate of the danger posed by the discharge to the environment, whether the discharge is continuing, and the measures taken or being taken (i) to remediate the problem caused by the discharge and any damage to the environment, and (ii) to avoid a repetition of the discharge.

“(3) SIGNATURE.—All reports filed under paragraph (1) must be signed by the highest ranking official having day-to-day managerial and operational responsibility for the facility at which the discharge occurs or, in the absence of such person, by another responsible high ranking official at such facility. Such highest ranking official shall be responsible for the accuracy of all information contained in such reports; except that such highest ranking official may file with the Administrator amendments to any such report if the report was signed in the absence of the highest ranking official by another high ranking official and if such amendments are filed within 7 days of the return of the highest ranking official.”.

(9) LIMITATION ON ISSUANCE OF PERMITS TO SIGNIFICANT NONCOMPLIERS.—Section 402 is further amended by adding at the end the following:

“(t) SIGNIFICANT NONCOMPLIERS.—No permit may be issued under this section to any person (other than a publicly owned treatment works) identified under section 309(j)(3) of this Act or to any other person owned or controlled by the identified person, owning or controlling the identified person, or under common control with the identified person, until the Administrator or the State or States in which the violation or violations occur determines that the condition or conditions giving rise to such violation or violations have been corrected. No permit application submitted after the date of the enactment of this subsection may be approved unless the application includes a list of all violations of this Act by a person identified under section 309(j) of this Act during the 3-year period preceding the date of submission of the application and evidence indicating whether the underlying cause of each such violation has been corrected.”.

(10) APPLICABILITY.—The amendments made by this subsection shall apply to permits issued before, on, or after the date of the enactment of this Act; except that—

(A) with respect to permits issued before such date of enactment to a major industrial

or municipal discharger, such amendments shall take effect on the last day of the 1-year period beginning on such date of enactment; and

(B) with respect to all other permits issued before such date of enactment, such amendments shall take effect on the last day of the 2-year period beginning on such date of enactment.

(f) EXPIRED STATE PERMITS.—Section 402(d) (33 U.S.C. 1342(d)) is amended by adding at the end the following:

“(5) EXPIRED STATE PERMITS.—In any case in which—

“(A) a permit issued by a State for a discharge has expired,

“(B) the permittee has submitted an application to the State for a new permit for the discharge, and

“(C) the State has not acted on the application before the last day of the 18-month period beginning on the date the permit expired,

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

(g) COMPLIANCE SCHEDULE.—Section 302(b)(2)(B) (33 U.S.C. 1312(b)(2)(B)) is amended by adding at the end the following: “The Administrator may only issue a permit pursuant to this subparagraph for a period exceeding 2 years if the Administrator makes the findings described in clauses (i) and (ii) of this subparagraph on the basis of a public hearing.”.

(h) EMERGENCY POWERS.—Section 504 (33 U.S.C. 1364) is amended to read as follows:

“SEC. 504. COMMUNITY PROTECTION.

“(a) ISSUANCE OF ORDERS; COURT ACTION.—Notwithstanding any other provision of this Act, whenever the Administrator finds that, because of an actual or threatened direct or indirect discharge of a pollutant, there may be an imminent and substantial endangerment to the public health or welfare (including the livelihood of persons) or the environment, the Administrator may issue such orders or take such action as may be necessary to protect public health or welfare or the environment and commence a suit (or cause it to be commenced) in the United States district court for the district where the discharge or threat occurs. Such court may grant such relief to abate the threat and to protect against the endangerment as the public interest and the equities require, enforce, and adjudge penalties for disobedience to orders of the Administrator issued under this section, and grant other relief according to the public interest and the equities of the case.

“(b) ENFORCEMENT OF ORDERS.—Any person who, without sufficient cause, violates or fails to comply with an order of the Administrator issued under this section, shall be liable for civil penalties to the United States in an amount not to exceed \$25,000 per day for each day on which such violation or failure occurs or continues.”.

(i) CITIZEN SUITS.—

(1) SUITS FOR PAST VIOLATIONS.—Section 505 (33 U.S.C. 1365) is amended—

(A) in subsection (a)(1) by inserting “to have violated or” after “who is alleged”;

(B) in subsection (b)(1)(A)(ii) by striking “occurs” and inserting “has occurred or is occurring”; and

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

(2) TIME LIMIT.—Section 505(b)(1)(A) is amended by striking “60 days” and inserting “30 days”.

(3) EFFECT OF JUDGMENTS ON CITIZEN SUITS.—Section 505(b) is further amended—

(A) in paragraph (1)(B)—

(i) by striking “, or a State”; and

(ii) by striking “right.” and inserting “right and may obtain costs of litigation under subsection (d), or”; and

(B) by adding at the end the following: "The notice under paragraph (1)(A) need set forth only violations which have been specifically identified in the discharge monitoring reports of the alleged violator. An action by a State under subsection (a)(1) may be brought at any time. No judicial action by the Administrator or a State shall bar an action for the same violation under subsection (a)(1) unless the action is by the Administrator and meets the requirements of this paragraph. No administrative action by the Administrator or a State shall bar a pending action commenced after February 4, 1987, for the same violation under subsection (a)(1) unless the action by the Administrator or a State meets the requirements of section 309(g)(6) of this Act."

(4) CONSENT JUDGMENTS.—Section 505(c)(3) is amended by adding at the end the following: "Consent judgments entered under this section may provide that the civil penalties included in the consent judgment be used for carrying out mitigation projects in accordance with section 309(d)."

(5) PRETREATMENT REQUIREMENTS.—Section 505(f)(4) is amended by striking "or pretreatment standards" and inserting "or pretreatment standard or requirement described in section 307(d)".

(6) EFFLUENT STANDARD DEFINITION.—Section 505(f)(6) is amended by inserting "narrative or mathematical" before "condition".

(7) DEFINITION OF CITIZEN.—Section 505(g) is amended to read as follows:

"(g) CITIZEN DEFINED.—For purposes of this section, the term 'citizen' means a person or persons having an interest (including a recreational, aesthetic, environmental, health, or economic interest) which is, has been, or may be adversely affected and includes a person who uses or enjoys the waters into which the discharge flows (either directly or through a publicly owned treatment works), who uses or enjoys aquatic resources or nearby lands associated with the waters, or who would use or enjoy the waters, aquatic resources, or nearby lands if they were less polluted."

(8) OFFERS OF JUDGMENT.—Section 505 is further amended by adding at the end the following:

"(i) APPLICABILITY OF OFFERS OF JUDGMENT.—Offers of judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure shall not be applicable to actions brought under subsection (a)(1) of this section."

(j) ISSUANCE OF SUBPOENAS.—Section 509(a)(1) (33 U.S.C. 1369(a)(1)) is amended by striking "obtaining information under section 305 of this Act, or carrying out section 507(e) of this Act," and inserting "carrying out this Act."

(k) JUDICIAL REVIEW OF EPA ACTIONS.—Section 509(b)(1) (33 U.S.C. 1369(b)(1)) is amended—

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

(2) by inserting after the comma at the end of clause (E) "including a decision not to include any pollutant in such effluent limitation or other limitation if the Administrator has or is made aware of information indicating that such pollutant is present in any discharge subject to such limitation,"; and

(3) by striking "and (G)" and inserting the following: "(G) in issuing or approving any water quality standard under section 303(c) or 303(d), (H) in issuing any water quality criterion under section 304(a), including a decision not to address any effect of the pollutant subject to such criterion if the Administrator has or is made aware of information indicating that such effect may occur, and (J)".

(l) NATIONAL CLEAN WATER TRUST FUND.—

(1) IN GENERAL.—Title V (33 U.S.C. 1361-1377) is amended by redesignating section 519 as section 522 and by inserting after section 518 the following new section:

"SEC. 519. NATIONAL CLEAN WATER TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Clean Water Trust Fund'.

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Clean Water Trust Fund amounts equivalent to the penalties collected under section 309 of this Act and the penalties collected under section 505(a) of this Act (excluding any amounts ordered to be used to carry out mitigation projects under section 309 or 505(a), as the case may be).

"(c) ADMINISTRATION OF TRUST FUND.—The Administrator shall administer the Clean Water Trust Fund. The Administrator may use moneys in the Fund to carry out inspections and enforcement activities pursuant to this Act. In addition, the Administrator may make such amounts of money in the Fund as the Administrator determines appropriate available to carry out title VI of this Act."

(2) CONFORMING AMENDMENT TO STATE REVOLVING FUND PROGRAM.—Section 607 (33 U.S.C. 1387) is amended—

(A) by inserting "(a) IN GENERAL.—" before "There is"; and

(B) by adding at the end the following:

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

(m) APPLICABILITY.—Sections 101(h), 309(g)(6)(A), 505(a)(1), 505(b), 505(g), and 505(i) of the Federal Water Pollution Control Act, as inserted or amended by this section, shall be applicable to all cases pending under such Act on the date of the enactment of this Act and all cases brought on or after such date of enactment relating to violations which occurred before such date of amendment.

Redesignate subsequent subsections of section 313 of the bill accordingly.

Page 81, line 4, strike "(h)" and insert "(k)".

Page 131, line 5, strike "(r)" and insert "(u)".

Page 188, line 21 strike "(s)" and insert "(v)".

Page 192, line 6, strike "(t)" and insert "(w)".

Page 216, line 11, strike "by" and all that follows through "518" on line 13 and insert "by inserting after section 519".

Page 216, line 14, strike "519" and insert "520".

Page 217, line 7, strike "before" and all that follows through the comma on line 8 and insert "after section 520".

Page 217, line 9, strike "520" and insert "521".

Page 321, line 3, strike "(8)" and insert "(7)".

It was decided in the { Yeas 106 negative } Nays 299

- Frank (MA) Martinez Serrano
Frost McDermott Shays
Furse McHale Slaughter
Gejdenson McKinney Smith (NJ)
Gephardt Menendez Stark
Gibbons Mineta Stokes
Gonzalez Moran Studds
Green Nadler Thompson
Gutierrez Oberstar Thornton
Hastings (FL) Olver Torricelli
Hinchev Owens Towns
Jackson-Lee Pallone Tucker
Johnson, E. B. Payne (NJ) Velazquez
Johnston Pelosi Vento
Kaptur Rahall Visclosky
Kennedy (MA) Reynolds Ward
Kennedy (RI) Rivers Waters
Kildee Roukema Watt (NC)
Lantos Roybal-Allard Waxman
Lewis (GA) Rush Woolsey
Lofgren Sabo Wyden
Lowey Sanders Wynn
Luther Saxton Yates
Maloney Schroeder
Markey Scott

NOES—299

- Allard Dooley Jones
Archer Doolittle Kanjorski
Army Dornan Kasich
Bachus Doyle Kelly
Baesler Dreier Kennelly
Baker (CA) Duncan Kim
Baker (LA) Edwards King
Baldacci Ehlers Kingston
Ballenger Ehrlich Klink
Barcia Emerson Klug
Barr English Knollenberg
Barrett (NE) Ensign Kolbe
Barrett (WI) Everett LaFalce
Bartlett Ewing LaHood
Bass Farr Largent
Bateman Fawell Latham
Bentsen Fazio LaTourette
Bereuter Fields (TX) Laughlin
Bevill Flanagan Lazio
Bilbray Foley Leach
Bilirakis Fowler Levin
Bishop Franks (CT) Lewis (CA)
Bliley Franks (NJ) Lewis (KY)
Blute Frelinghuysen Lightfoot
Boehlert Funderburk Lincoln
Boehner Gallegly Linder
Bonilla Ganske Lipinski
Brewster Gekas Livingston
Browder Geren LoBiondo
Brown (FL) Gilchrest Longley
Brownback Gillmor Lucas
Bryant (TN) Gilman Manton
Bunn Goodlatte Manzullo
Bunning Goodling Mascara
Burr Gordon Matsui
Burton Goss McCarthy
Buyer Graham McCollum
Callahan Greenwood McCrery
Calvert Gunderson McDade
Camp Gutknecht McHugh
Canady Hall (OH) McInnis
Cardin Hall (TX) McIntosh
Castle Hamilton McKeon
Chabot Hansen McNulty
Chambliss Harman Meehan
Chapman Hastert Metcalf
Chenoweth Hastings (WA) Meyers
Christensen Hayes Mfume
Chrysler Hayworth Mica
Clement Hefley Miller (FL)
Clinger Hefner Minge
Coble Heineman Molinari
Coburn Herger Mollohan
Collins (GA) Hillery Montgomery
Combest Hilliard Moorhead
Condit Hobson Morella
Cooley Hoekstra Murtha
Costello Hoke Myers
Cox Holden Myrick
Cramer Horn Neal
Crane Hostettler Nethercutt
Crapo Houghton Neumann
Creameans Hoyer Ney
Cubin Hunter Norwood
Cunningham Hutchinson Obey
Danner Hyde Orton
Davis Inglis Oxley
de la Garza Istook Packard
Deal Jacobs Parker
DeLay Jefferson Paxon
Diaz-Balart Johnson (CT) Payne (VA)
Dickey Johnson (SD) Peterson (MN)
Dingell Johnson, Sam Petri

[Roll No. 324]

AYES—106

- Ackerman Clayton Durbin
Andrews Clyburn Engel
Becerra Coleman Eshoo
Beilenson Conyers Evans
Berman Coyne Fields (LA)
Bonior DeFazio Filner
Borski DeLauro Flake
Brown (CA) Dellums Foglietta
Brown (OH) Deutsch Forbes
Bryant (TX) Dixon Ford
Clay Doggett Fox